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1923

NORTH CAROLINA

FISHING LAWS

1923

CHAPTER 37. CONSOLIDATED STATUTES
AS AMENDED



ISSUED BY
FISHERIES COMMISSION BOARD

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DEPARTMENT OF FISHERIES

FISHERIES COMMISSION BOARD

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MISS CARITA WADE, Stenographer.....	Morehead City

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[CHAPTER 37, CONSOLIDATED STATUTES, AS AMENDED.]

NORTH CAROLINA FISHING LAWS, 1923

SUBCHAPTER I. FISHERIES COMMISSION BOARD ACT

ART. 1. DEFINITIONS AND GENERAL PROVISIONS

1865. Fish, fishing, fisheries, defined. Wherever the word "fish" or "fishes," as a substantive, occurs in this subchapter, it shall be construed to include porpoises and other marine mammals, fishes, mollusca, and crustaceans, and wherever the word "fishing" or "fisheries" occurs it shall be construed to include all operations involved in using, setting or operating apparatus employed in killing or taking the said animals or in transporting and preparing them for market.

1915, c. 84, s. 24.

1866. Administrative agencies under former laws conformed to present law. All acts relating to the fisheries of North Carolina are hereby amended so that the words "shellfish commissioner," "oyster commissioner," or "fish commissioner" shall read "fisheries commissioner," and the words "shellfish commission" shall read "fisheries commission."

1915, c. 84, s. 25; 1917, c. 290, s. 9.

1867. State jurisdiction over fisheries. The State of North Carolina shall have exclusive jurisdiction and control over all the fisheries of the State wherever located.

1915, c. 84, s. 18; 1917, c. 290, s. 9.

For legislative consent to Federal regulation of fish on certain Federal lands, see chapter Game Laws, s. 2099.

1868. Edible fish used only as food. Any person, firm or corporation who catches or causes to be caught any edible fish in the waters of the State of North Carolina for any other purpose than as food, and any person, firm or corporation who shall use any edible fish for fertilizing purposes, shall be guilty of a misdemeanor and fined not less than fifty dollars or imprisoned not less than thirty days.

1915, c. 84, s. 23.

ART. 2. FISHERIES COMMISSION BOARD; ORGANIZATION, OFFICERS, SUPPORT

1869. Creation and organization of board. For the purpose of enforcing laws relating to all fish, there is hereby created a Fisheries Commission, which shall consist of eleven members appointed by the Governor and confirmed by the Senate, at least six of whom shall be from the several fishing districts of the State, and shall have a practical knowledge of or be familiar with the fishing industry, who shall be denominated the Fisheries Commission Board. Four of said members shall be appointed for a term of two years from April first, one thousand nine hundred and twenty-three, four for a term of four years from said date, and three for a term of six years from said date, and shall be so designated by the Governor in his message to the Senate appointing them. Any commissioner appointed by the Governor under this act may be removed by him for cause. In the case of death, resignation, removal from the State, removal by the Governor for cause, or mental disability of any commissioner during his term of office, his successor shall be appointed by the Governor to fill out the

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unexpired term, and such appointment shall be reported to the next session of the Senate for its action. If the Senate shall refuse to confirm any appointee of the Governor, then it shall be his duty to appoint another and send his name to the Senate for its action. At the expiration of the term of office of any of said commissioners, his successor shall be appointed in a like manner by the Governor for a term of six years. The eleven members shall receive four dollars per day each and traveling expenses while attending meetings of the board: Provided, the per diem and expenses shall not exceed two hundred and fifty dollars each per annum: Provided further, the chairman may receive such compensation as the board allows.

Any money that may be in the State Treasury on April first, one thousand nine hundred and twenty-three, to the credit of the present Fisheries Commission Board shall be held by the State Treasurer to the credit of the Fisheries Commission Board created by this act, and said board is authorized to pay out of the Fisheries Commission fund all just claims that may be outstanding against the present Fisheries Commission Board. All boats, fishing and oyster tackle, office supplies, stationery, and all other supplies of whatever character belonging to the present Fisheries Commission Board shall be transferred to the Fisheries Commission Board created by this act on or before April first, one thousand nine hundred and twenty-three.

That all powers and duties imposed by chapter thirty-seven of the Consolidated Statutes of one thousand nine hundred and nineteen, and the amendments heretofore or hereafter made to the same, upon the present Fisheries Commission Board be, and the same are hereby, transferred upon the Fisheries Commission Board created by this act.

1915, c. 84, s. 1; 1917, c. 290, s. 1; 1923.

1870. Fisheries Commissioner and assistant commissioners. Said board shall appoint a Fisheries Commissioner within thirty days after the passage of this act, and the said commissioner shall be responsible to the Fisheries Commission Board for carrying out the duties of his office, and shall make semi-annual reports to them at such time as they may require. The term of office of said commissioner and his successor in office shall be four years, or until his successor is appointed and qualified, and in case of vacancy in the office the appointment shall be to fill the vacancy. The said commissioner may appoint two assistants by and with the consent of the Fisheries Commission Board, who shall hold said offices at the pleasure of the Fisheries Commissioner and the board, whose duties shall be prescribed by the Fisheries Commissioner. The aforesaid commissioner and assistant commissioners shall receive such pay as the Fisheries Commission Board shall determine. During the absence of the commissioner, or his inability to act, the Fisheries Commission Board shall appoint one of the assistant commissioners to have and exercise all the powers of the commissioner. The commissioner and assistant commissioners shall each execute and file with the Secretary of State a bond, payable to the State of North Carolina, in the sum of five thousand dollars for the commissioner and twenty-five hundred dollars each for each of the assistant commissioners, with sureties to be approved by the Secretary of State, conditioned for the faithful performance of their duties and to account for and pay over, pursuant to law, all moneys received by them in their office. The Fisheries Commissioner and assistant commissioners shall take and subscribe an oath to support the Constitution, and for the faithful performance of the

duties of his office, which oaths shall be filed with their bonds. The assistant commissioners may be removed for cause by the commissioner, who may appoint their successors.

1915, c. 84, s. 1; 1917, c. 290, s. 1.

1871. Fish inspectors. The Fisheries Commissioner may appoint, with the approval of the Fisheries Commission Board, inspectors in each county having fisheries under his jurisdiction, who will assist him at such times as he may require. The said inspector shall serve under the direction of the commissioner, receiving compensation not to exceed three dollars per day and necessary expenses while in actual service.

1915, c. 84, s. 2.

1872. Officers to be free from financial interest in fisheries. The Fisheries Commissioner, assistant commissioners, and inspectors shall not be financially interested in any fishing industry in North Carolina.

1915, c. 84, s. 8; 1921, c. 194.

1873. Clerical force and office. The Fisheries Commissioner shall rent and equip an office, which will be adequate for the business of the commission, in some town conveniently located to the maritime fisheries, and he is authorized to employ such clerks and other employes as may be necessary for the proper carrying on of the work of his office, by and with the consent of the Fisheries Commission Board.

1915, c. 84, s. 3.

1874. Boats and equipment. The Fisheries Commissioner is authorized, by and with the consent of the Fisheries Commission Board, to purchase or rent such boats, nets, and other equipment as may be necessary to enable him and his assistants to fulfill the duties specified in this chapter.

1915, c. 84, s. 4.

1875. "Fisheries Commission fund" derived from imposts. All license fees, taxes, rentals of bottoms for oyster or clam cultivation and other imposts upon the fisheries, in whatever manner collected, shall, except as otherwise provided in this chapter, be deposited with the State Treasurer to the credit of the Fisheries Commission fund, to be drawn upon as directed by the Fisheries Commission Board.

1915, c. 84, s. 9.

1876. Temporary and annual appropriations. There is hereby appropriated out of the general treasury as a supplementary fund the sum of ten thousand dollars annually for two years, or as much thereof as may be needed, to the Fisheries Commission to carry out the work of the commission in the protection and promotion of the fisheries of the State, this sum to be repaid to the general treasury by the Fisheries Commission when it shall be on a self-sustaining basis; said sum to be used and expended as directed by the Fisheries Commission Board, and any part of it that may be required may be used for purchasing boats and other equipment necessary to carry out the work of the commission.

The sum of ten thousand dollars is appropriated annually for the support and maintenance of the Fisheries Commission.

1915, c. 84, s. 16; 1917, c. 193, s. 26.

1877. Succeeds Fish Commission and Oyster Commission as to funds, property and debts. Any money that may be in the State Treasury to the credit of the Fish Commission and Oyster Commission fund on May first,

nineteen hundred and fifteen, shall be transferred by the State Treasurer to the credit of the Fisheries Commission fund, and the Fisheries Commission Board is authorized to pay out of the Fisheries Commission fund all just claims that may be outstanding against the Fish or Oyster Commissions.

All boats, fishing and oyster tackle, office supplies, stationery, and all other supplies of whatever character belonging to the Fish Commission and Oyster Commission shall be transferred to the Fisheries Commissioner for the use of the Fisheries Commission.

1915, c. 84, ss. 16, 17.

ART. 3. POWERS AND DUTIES OF BOARD AND OFFICERS

1878. Regulations as to fish, fishing, and fisheries made by board. The Fisheries Commission Board is hereby authorized to regulate, prohibit, or restrict in time, place, character, or dimensions, the use of nets, appliances, apparatus, or means employed in taking or killing fish; to regulate the seasons at which the various species of fish may be taken in the several waters of the State, and to prescribe the minimum sizes of fish which may be taken in the said several waters of the State, or which may be bought, sold, or held in possession by any person, firm, or corporation in the State; and such regulations, prohibitions, restrictions and prescriptions, after due publication, which shall be construed to be once a week for four consecutive weeks in some newspaper published in North Carolina, shall be of equal force and effect with the provisions of this act; and any person violating the provisions of this section shall be guilty of a misdemeanor, and, upon conviction, shall be fined or imprisoned, at the discretion of the court.

1915, c. 84, s. 21; 1917, c. 290, s. 7.

For legislative consent to Federal regulation of fish on certain lands, see Game Laws, s. 2099.

1879. Regulations affecting existing interests not effective for two years. In making regulations the Fisheries Commission Board shall give due weight and consideration to all factors which will affect the value of the present investment in the fisheries, and no changes in the existing laws which, if they should go into effect immediately, would tend to cause fishermen to lose their property shall go into effect until two years from the date that the change has been made by the Fisheries Commission Board.

1915, c. 84, s. 21; 1917, c. 290, s. 7.

1880. Hearing before changes as to certain regulations. If, however, a petition signed by five or more voters of the district or community which will be affected by the proposed changes is filed with the Fisheries Commission Board through the Fisheries Commissioner, assistant commissioners or inspectors, asking that they have a hearing before any proposed change in the territory, size of mesh, length of net, or time of fishing shall go into effect, petitioning that they be heard regarding such change, the Fisheries Commission Board shall, in that event, designate by advertisement for a period of thirty days at the courthouse and three other public places in the county affected, and also by publication in a newspaper of the county, if such is published in said county, once a week for two consecutive weeks, a place at which said board will meet and hear argument for and against said change, and may ratify, rescind, or alter this previous order of change as may seem just in the premises.

1915, c. 84, s. 21; 1917, c. 290, 7.

1881. Regulation of shipment of water products. The Fisheries Commission Board shall have power and authority to make such rules regulating the shipment and transportation of fish, oysters, clams, crabs, scallops, and other water products as it may deem necessary.

1919, c. 333, s. 4.

1882. Reports of board to Legislature; publication. The Fisheries Commission Board shall cause to be prepared and submitted to each Legislature a report showing the operations and collections and expenditures of the Fisheries Commission; and it shall also cause to be prepared for publication such other reports, with necessary illustrations and maps, as will adequately set forth the results of the work and the investigations of the Fisheries Commission, all such reports, illustrations, and maps to be printed and distributed at the expense of the State, as are other public documents, as the Fisheries Commission Board may direct.

1915, c. 84, s. 15.

1883. Duties of commissioner. It is the duty of the commissioner: To enforce all acts relating to the fish and fisheries of North Carolina.

By and with the advice and consent of the Fisheries Commission Board, to make such regulations as shall maintain open for the passage of fishes all inlets and not less than one-third of the width of all sounds and streams, or such greater proportions of their width as may be necessary.

To collect and compile statistics showing the annual product of the fisheries of the State, the capital invested, and the apparatus employed, and any fisherman refusing to give these statistics shall be refused a license for the next year.

To prepare and have on file in his office maps based on the charts of the United States Coast and Geodetic Survey, of the largest scale published, showing as closely as may be the location of all fixed apparatus employed during each fishing season.

To have surveyed and marked in a prominent manner those areas of waters of the State in which the use of any or all fishing appliances are prohibited by law or regulation, and those areas of waters in the State in which oyster tonging or dredging is prohibited by law.

To prosecute all violations of the fish laws, and wherever necessary he may employ counsel for this purpose.

To remove, pending trial, nets or other appliances he finds being fished or used in violation of the fisheries laws of the State.

To carry on investigations relating to the migrations and habits of the fish in the waters of the State, also investigations relating to the cultivation of the oyster, clam and other mollusca, and of the terrapin and crab, and for this purpose he may employ such scientific assistance as may be authorized by the Fisheries Commission Board.

The commissioner shall be responsible for the collection of all license taxes, fees, rentals, or other imposts on the fisheries, and shall pay same into the State Treasury to the credit of the Fisheries Commission fund. He shall on or before the twenty-fifth day of each month mail to the Treasurer of the State a consolidated statement showing the amount of taxes and license fees collected during the preceding month, and by and from whom collected.

He shall, in an official capacity, have power to administer oaths and to send for and examine persons and papers.

If any fisherman fail or refuse to give statistics as required in this section, the board may extend the time of his operations, and the Fisheries

Commission Board is empowered to make such rules and regulations as they think proper to procure statistics as to the annual products of the fisheries of the State.

1915, c. 84, s. 5; 1917, c. 290, s. 10.

1884. Violations of law to be investigated; nets seized and sold; bond of commissioner liable. It is the duty of the Fisheries Commissioner, or any of his assistants or deputies, whenever a complaint is made to him, either orally or in writing, stating that any of the laws relating to fish or fisheries are being violated at any particular place, to go himself or send a deputy to such place and investigate same, and he shall seize and remove all nets or other appliances set or being used in violation of the fisheries laws of the State, sell same at public auction after advertisement for twenty days at the courthouse and three other public places in the county in which the seizure was made, and apply the proceeds of sale to the payment of costs and expenses of such removal, and pay any balance remaining to the school fund of the county nearest to where the offense is committed. And the failure of the Fisheries Commissioner or his deputies to perform the above prescribed duty shall render his bond liable to a penalty of five hundred dollars, one-half to go to the informant and the other half to be paid to the school fund of the county in which the action is brought.

1911, c. 18.

For construction and application of similar provision, see Daniels v. Homer, 139-219.

1885. Arrests without warrant. The Fisheries Commissioner, assistant commissioners and inspectors shall have power, without warrant, to arrest any person or persons violating any of the fishery laws in their presence, who shall be carried before a magistrate for trial as is required by law in case of persons arrested without warrant.

1915, c. 84, s. 6; 1917, c. 290, s. 2.

1886. Taking fish for scientific purposes. The Fisheries Commissioner and the United States Bureau of Fisheries may take and cause to be taken for scientific purposes or for fish culture any fish or other marine organism at any time from the waters of North Carolina, any law to the contrary notwithstanding; and may cause or permit to be sold such fishes or parts of fishes so taken as may not be necessary for purposes of scientific investigations or fish culture: Provided, that in taking fish for fish culture in the hatcheries of this State the fish shall only be taken while the hatcheries are in operation and only between the hours of four and eleven p.m.

1915, c. 84, s. 7.

ART. 4. TAXES AND REGULATIONS

1887. Licenses to fish; issuance, terms, and enforcement. Each and every person, firm, or corporation, before commencing or engaging in any kind of fishing in the State, shall file with an inspector of the county in which he desires to fish, or with the Fisheries Commissioner or any of his assistant commissioners, a sworn statement as to the number and kind of nets, seines, or other apparatus intended to be used in fishing. Upon filing this sworn statement on oath the Fisheries Commissioner shall issue or cause to be issued to the said party or parties a license as prescribed by law; said applicant shall pay a license fee equal in amount to the fee or tax prescribed by law for fishing different kinds of apparatus in the waters of the State of North Carolina, or for tonging or dredging for oysters, as the case may be. The Fisheries Commissioner shall keep in a book especially prepared for the purpose an exact record of all licenses, to whom issued, the number and kinds of nets, boats, and other apparatus licensed,

and the license fees received. He shall furnish to each person, firm, or corporation in whose favor a license is issued a special tag which shall show the license number and number of pound nets, or yards of seine, or yards of gill net that the licensee is authorize to use, and the licensee shall attach said tag to the net in a conspicuous manner satisfactory to the Fisheries Commissioner. All boats or vessels licensed to scoop, scrape, or dredge oysters shall display on the port side of the jib, above the reef and bonnet, and on the oppoite side of the mainsail, above all reef points, in black letters not less than twenty inches long, the initial letter of the county granting the license and the number of said license, the number to be painted on canvas and furnished by the Fisheries Commissioner, for which he shall receive the sum of fifty cents. Any boat or vessel used in catching oysters without having complied with the provisions of this section may be seized, forfeited, advertised for twenty days at the courthouse and two other public places in the county where seized, and sold at some public place designated in the advertisement, and the proceeds, less the cost of the proceedings, shall be paid into the school fund. The licenses to fish with nets shall terminate on December thirty-first. Any person who shall willfully use for fishing purposes any kind of net whatever, without having first complied with the provisions of this section, shall be guilty of a misdemeanor and, upon conviction, shall be fined twenty-five dollars for each and every offense.

1915, c. 84, s. 10; 1917, c. 290, s. 9.

Power of Legislature to restrict the right of fishing: Daniels v. Homer, 139-219; State v. Gallop, 126-979.

1888. Resident may catch shellfish for own use. No tax shall be levied or collected from bona fide residents or citizens of this State who take fish, oysters, clams, scallops, or crabs other than with dredges for his own personal or family's use and consumption. But if any person shall sell or offer for sale any such products without having first procured a license, he shall be guilty of a misdemeanor and shall be fined not less than five dollars or imprisoned not exceeding thirty days.

1917, c. 290, s. 6.

1889. Licenses for oyster boats; schedule. The Fisheries Commissioner, assistant commissioner, or inspector, may grant license for a boat to be used in catching oysters upon application made, according to law, and the payment of a license tax as follows: On any boat or vessel without cabin or deck, and under custom-house tonnage, using scrapes or dredges, measuring over all twenty-five feet and under thirty, a tax of three dollars; fifteen feet and under twenty-five feet, a tax of two dollars; on any boat or vessel with cabin or deck and under custom-house tonnage, using scrapes or dredges, measuring over all thirty feet or under, a tax of five dollars; over thirty feet, a tax of six dollars; on any boat or vessel using scoops, scrapes, or dredges required to be registered or enrolled in the custom house, a tax of one dollar and fifty cents a ton on gross tonnage. No vessel propelled by steam, gas or electricity, and no boat or vessel not the property absolutely of a citizen or citizens of this State, shall receive license or be permitted in any manner to engage in the catching of oysters anywhere in the waters of this State.

1915, c. 84, s. 11.

1890. Boats using purse seines or shirred nets; tax. All boats or vessels of any kind used in operating purse seines or shirred nets shall pay a license fee of two dollars per ton on gross tonnage, custom-house measurement, which shall be independent of and separate from the seine or net

tax on the seines or nets used on said boats. This license fee shall be for one year, from January first, and shall not be issued for any period less than one year. It shall be issued by the Fisheries Commission.

1915, c. 84, s. 12; 1917, c. 290, s. 3; 1919, c. 333, s. 3.

1891. Licenses for various appliances and their users; schedule. The following license tax is hereby levied annually upon the different fishing appliances used in the waters of North Carolina:

Anchor gill nets, twenty-five cents for one hundred yards or fraction thereof.

Stake gill nets, twenty-five cents for each hundred yards or fraction thereof.

Drift gill nets, twenty-five cents for each hundred yards or fraction thereof.

Pound nets, one dollar and twenty-five cents on each pound; the pound is construed to apply to that part of net which holds and from which the fish are taken. No pound net shall be set in the waters of the Atlantic ocean within the three-mile limit.

Submarine pounds, or submerged trap nets, two dollars for each trap or pound.

Shrimp trawl nets, twenty-five cents each.

Seines, drag nets and mullet nets under one hundred yards, one dollar each.

Seines, drag nets and mullet nets over one hundred yards and under three hundred yards, one dollar per hundred yards or fraction thereof.

Seines, drag nets and mullet nets over three hundred yards and under one thousand yards, one dollar and twenty-five cents per one hundred yards or fraction thereof.

Seines, drag nets and mullet nets over one thousand yards, one dollar and seventy-five cents per one hundred yards or fraction thereof.

Fyke nets, twenty-five cents each.

Tonging for oysters, the license tax shall be one dollar for each tonger.

For taking scallops with rakes, tongs, scoops or scrapes, one dollar for each person and for every person assisting or employed.

For taking clams with rakes, tongs, scoops or scrapes, one dollar for each person and for every person assisting or employed.

And for other apparatus used in fishing, the license shall be the same as that for the apparatus or appliance which it most resembles for the purpose used.

1915, c. 84, s. 14; 1917, c. 290, s. 5; 1919, c. 333, s. 3.

1892. License tax on dealers and packers. An annual license tax, for the year beginning January first in each year, to be collected by the Fisheries Commission Board, is imposed on all persons or dealers who purchase or carry on the business of canning, packing, shucking, or shipping the sea products enumerated below, as follows: On—

oysters, five dollars;

scallops, five dollars;

clams, five dollars;

crabs, for shipment out of the State, five dollars;

fish, two dollars and fifty cents;

shrimp, two dollars and fifty cents: Provided, that (1) the license tax for shucking or selling oysters and clams on local market by retail shall be fifty cents a year; (2) no license tax shall be imposed on fishermen who pay a license on nets to catch fish or shrimp, and who ship only the fish or shrimp caught in such licensed nets.

1917, c. 290, s. 5; 1919, c. 333, ss. 1, 2.

1893. Purchase tax on dealers; schedule; collection. All dealers in and all persons who purchase, catch, or take for canning, packing, shucking, or shipping the sea products enumerated below shall be liable to a tax to be collected by the Fisheries Commission Board as follows. On—
oysters, two cents a bushel, except coon oysters, one cent a bushel;
escallops, five cents a gallon;
clams, ten cents a bushel;
soft crabs, two and one-half cents a dozen;
hard crabs, ten cents a bushel;
crab meat, two and one-half cents a gallon;
shrimps, when cooked, one-fourth of a cent a pound; when green, one-eighth of a cent a pound.

But none of these products shall be twice taxed, and no tax shall be imposed on oysters, scallops, or clams taken from private beds or gardens. Upon failure to pay said tax, the license provided in the preceding section shall at once be null and void and no further license shall be granted during the current year; and it shall be the duty of the commissioner, assistant commissioner, or inspector to institute suit for the collection of said tax. Such suit shall be in the name of the State of North Carolina on relation of the commissioner or inspector at whose instance such suit is instituted, and the recovery shall be for the benefit and for the use of the general Fisheries Commission fund. Any person failing or refusing to pay said tax shall be guilty of a misdemeanor.

1915, c. 84, s. 13; 1917, c. 290, s. 4; 1919, c. 333, s. 1; 1921, c. 194, s. 1; 1921 (Ex. Sess.), c. 42, s. 3; P. L. 1923.

1894. Printed regulations furnished dealers. It is the duty of the Fisheries Commission Board, upon issuing any license under the provisions of this subchapter, to furnish with said license the printed regulations controlling the waters in which such fisherman applying therefor proposes to fish.

1917, c. 290, s. 12.

1895. Dealers to keep and furnish statistics. All persons, firms, or corporations engaged in buying, packing, canning, or shipping oysters, scallops, clams, crabs, shrimp, and fish taken from the public grounds or natural beds of the State, or the natural waters or streams of the State, shall keep a permanent record of all such products, showing the quantity of each of said products so purchased, packed, canned, or shipped, the kind of fish, from whom each of said species of fish, mollusca, or crustaceans were purchased, that a statement of all these facts shall be made whenever required by the Fisheries Commissioner, but shall be at least at the end of each month. That all such records shall be open at all times to the Fisheries Commissioner, assistant commissioner, or any one under the direction of the Fisheries Commissioner.

1917, c. 290, s. 11.

1896. Disturbing marks or property of commission prohibited. Any person or persons removing, injuring, defacing, or in any way disturbing the posts, buoys, or any other appliances used by the Fisheries Commission in marking the restricted areas relating to any and all fishing, or marking other areas in which oyster tonging or dredging is prohibited by law, and those marking oyster bottoms that are leased for oyster cultivation, or shall injure or destroy any boat or other property of any kind used by the Fisheries Commission Board or any officer or employe thereof, shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, at the discretion of the court; and any person anchoring or mooring

a boat to any of these buoys or posts shall, upon conviction, be fined not less than twenty-five dollars nor more than one hundred dollars and imprisoned thirty days in jail, at the discretion of the court.

1915, c. 84, s. 22; 1917, c. 290, s. 8

1897. Explosives, drugs, and poisons prohibited. It shall be unlawful to place in any of the waters of this State any dynamite, giant or electric powder, or any explosive substance whatever, or any drug or poisoned bait, for the purpose of taking, killing or injuring fish. And any one violating this section shall, upon conviction, be fined not less than one hundred dollars and imprisoned not less than thirty days.

1915, c. 84, s. 19.

1898. Possession of fish killed by explosives as evidence. The possession of fish killed by explosive agencies shall be prima facie evidence that explosives were used for the purpose of killing fish.

Rev., s. 2466; Code, s. 3405; 1889, c. 312; 1911, c. 170.

1899. Discharge of deleterious matter into waters prohibited. It shall be unlawful to discharge or to cause or permit to be discharged into the waters of the State any deleterious or poisonous substance or substances inimical to the fishes inhabiting the said water; and any person, persons or corporation violating the provisions of this section shall be guilty of a misdemeanor, and, upon conviction, be fined or imprisoned in the discretion of the court: Provided, this section shall not apply to corporations chartered either by general law or special act before the 4th day of March, 1915.

1915, c. 84, s. 20.

1900. Operation of boats in violation of rules and laws forfeits boats and apparatus. If any person, firm, or corporation shall use or operate any boat or vessel of any kind, in violation of any rule of the Fisheries Commission Board, or any of the fish laws, it shall be the duty of the Fisheries Commissioner to revoke any license issued and seize such boat or vessel and any apparatus or appliance so used or operated; but the Fisheries Commission Board shall have authority to compromise by agreement with the owner of such boat or appliance for any such violation, and may return such boat or appliance so seized to the owner and reinstate license.

1919, c. 333, s. 5.

For revocation of license and forfeiture of oyster boats, see s. 1887.

1901. Violations of fisheries law misdemeanor; licenses forfeited. Upon failure of any person, firm, or corporation to comply with any of the provisions of this article, or any of the fisheries laws, any license issued to any such person, firm, or corporation may be revoked by the Fisheries Commission, and upon satisfactory settlement may be reinstated, with the consent of the board. All such persons violating the provisions of this article or of the fisheries law shall be guilty of a misdemeanor.

1917, c. 290, s. 11; 1919, c. 333, s. 4.

SUBCHAPTER II. SHELLFISH

ART. 5. SHELLFISH; GENERAL LAWS

Part 1. Definition of Natural Oyster Bed

1902. Oyster bed defined. A natural oyster or clam bed, as distinguished from an artificial oyster or clam bed, shall be one not planted by man, and is any shoal, reef or bottom where oysters are to be found growing in sufficient quantities to be valuable to the public.

Rev., s. 2371; 1893, c. 287, s. 1.

This definition very nearly in the words of State v. Willis, 104-764.

Part 2. Leases of Bottoms

1903. Fisheries Commissioner to lease. The Fisheries Commissioner shall have power to lease to any duly qualified person, firm, or corporation, for purposes of oyster or clam culture, any bottom of the waters of the State not a natural oyster bed, as defined in this article, nor a clam reservation, as defined in this article, in accordance with the provisions of this part of this article.

1909, c. 871, ss. 1, 9; 1919, c. 333, s. 6.

1904. Lessee to be citizen. Any citizen of North Carolina, or firm or corporation organized under the laws of the State and doing business within its limits, shall be granted the privilege of taking up bottoms for purposes of oyster or clam culture, under the provisions of this article.

1909, c. 871, ss. 2, 9; 1919, c. 333, s. 6.

1905. Areas leased in different waters. The area which may be taken up for purposes of oyster or clam culture shall not be less than one acre nor more than fifty acres, with the exception of the open waters of Pamlico Sound (and for the purposes of this article open waters of Pamlico Sound shall mean the waters that are outside of two miles of the shore line), in which the minimum limit shall be five acres and the maximum shall be two hundred acres: Provided, that the limit of entry in Core Sound, North River, Newport River, Bogue Sound, and all bays and creeks bordering on these waters, and in Jones Bay, Rose Bay, Abels Bay, Swan Quarter Bay, Middle Bay, Bay River, Deep Bay, Juniper Bay, West and East Bluff bays, Wysocking Bay, Fire Creek, Stumpy Point Bay, Mouse Harbor Bay, Maw Bay and Broad Creek, tributaries of Pamlico Sound, shall be one acre as a minimum and ten acres as a maximum: Provided further, however, that after March 9, 1910, the minimum area in Core Sound, North River, Newport River, Bogue Sound, and all bays and creeks bordering on these waters, and in Jones Bay, Rose Bay, Abels Bay, Swan Quarter Bay, Middle Bay, Bay River, Deep Bay, Juniper Bay, West and East Bluff bays, Wysocking Bay, Fire Creek, Stumpy Point Bay, Mouse Harbor Bay, Maw Bay and Broad Creek, tributaries of Pamlico Sound, shall be one acre and the maximum fifty acres; but no person, firm, corporation, or association shall, severally or collectively, hold any interest in any lease or leases aggregating an area of greater than fifty acres, except in the open waters of Pamlico Sound, where the aggregate area shall be two hundred acres.

The Fisheries Commission Board shall have authority to specify the acreage any one person may lease in the counties of Pender, New Hanover, and Brunswick.

1909, c. 871, ss. 2, 9; 1919, c. 333, s. 6; 1921, Ex. Sess., c. 46.

1906. Prerequisites for lease; application; deposit; survey; location. Such persons, firms, or corporations desiring to avail themselves of the privileges of this article shall make written application, on a form to be prepared by the Fisheries Commissioner, setting forth the name and address of the applicant, describing as definitely as may be the location and extent of the bottom for which application is made, and requesting the survey and leasing to the applicant of said bottom. As soon as possible after the application is received, the Fisheries Commissioner shall cause to be made a survey and map of said bottom, at the expense of the applicant. The Fisheries Commissioner shall also thoroughly examine said bottoms by sounding and by dragging thereover a chain to detect the presence of natural oysters. Should any natural oysters be found, the commissioner

shall cause examination to be made to ascertain the area and density of oysters on said bottom or bed, to determine whether the same is a natural bed, under the definition contained in this article. He shall be assisted in this examination on tonging ground by an expert tonger, to be appointed by the board of county commissioners of the county in which said bottom or the greater portion thereof is located, and the question as to whether the oyster growth is sufficiently dense to fall within the definition of the natural bed shall be determined by the quantity of oysters which the said expert tonger may be able to take in a specified time; and on dredging ground the commissioner shall be assisted by an expert dredger, appointed by the board of county commissioners of the county in which said bottom or the greater portion thereof is located, and the question as to whether the oyster growth is sufficiently dense to fall within the definition of the natural bed shall be determined by the quantity of oysters which the said expert dredger may be able to take in a specified time. The Fisheries Commissioner shall require the bodies of bottoms applied for to be as compact as possible, taking into consideration the shape of the body of water and the consistency of the bottom. No application shall be entertained nor lease granted for a piece of bottom within two hundred yards of a known natural bottom, bed or reef. A deposit of ten dollars will be required of each applicant at the time of making his application, said sum to be credited to the cost of the survey of the bottom applied for.

1909, c. 871, ss. 3, 9; 1919, c. 333, s. 6.

1907. Execution of lease; notice and filing; marking and planting. Immediately upon the completion of the survey and the mapping thereof, and the payment by the applicant of the cost of said survey and map, the Fisheries Commissioner shall execute to the applicant, upon a form approved by the Attorney General of the State, a lease for the bottoms applied for. A copy of the lease, map of the survey, and a description of the bottom, defining its position, shall be filed in the office of the Fisheries Commissioner. After the execution of said lease, the lessee shall have the sole right and use of said bottoms, and all shells, oysters and culls thereon or placed thereon shall be his exclusive property so long as he complies with the provisions of this law. The lessee shall stake off and mark the bottoms leased in the manner prescribed by the Fisheries Commissioner, and failure to do so within a period of thirty days of an order so to do issued by the commissioner shall subject said lessee to a fine of five dollars per acre for each sixty days default in compliance with said order. The corner stakes, at least, of each lease shall be marked with signs plainly displaying the number of the lease and the name of the lessee. The lessee shall, within two years of the commencement of his lease, have planted upon his holdings a quantity of shells equal to an average of fifty bushels of seed oysters or shells per acre of holdings, and within four years from the commencement of his lease a quantity of oysters or shells equal to an average of not less than one hundred and twenty-five bushels per acre. The Fisheries Commissioner shall, upon granting any lease, publish a notice of the granting of same in a newspaper of general circulation in the county wherein the bottom leased is located.

1909, c. 871, ss. 4, 9; 1919, c. 333, s. 6.

1908. Term and rental. All leases made under the provisions of this article shall begin upon the issuance of the lease, and shall expire on the first day of April of the twentieth year thereafter. The rental shall be at the rate of one dollar per acre for the first ten years and two dollars per acre per year for the next ten years of the lease, payable annually in

advance on the first day of April of each year: Provided, that in the open waters of Pamlico Sound (and for the purposes of this article the open waters of Pamlico Sound shall mean the waters that are outside the four miles of the shore line) the rental shall be at the rate of fifty cents per acre per year for the first three years, one dollar per acre per year for the next seven years, and two dollars per acre per year for the next ten years of the lease. This rental shall be in lieu of all other taxes and imposts whatever, and shall be considered as all and the only taxation which can be imposed by the State, counties, municipalities or other subordinate political bodies. The rental for the first year shall be paid in advance, to an amount proportional to the unexpired part of the year to the first of April next succeeding.

1909, c. 871, ss. 5, 9; 1919, c. 333, s. 6.

1909. Nature of lessee's rights; assignment and inheritance. The said lease shall be heritable and transferable, in whole or in part, provided the qualifications of the heirs and transferees are such as are described by this article. Non-residents, acquiring by inheritance or process sale, or persons already holding the maximum area permitted by this article, shall, within a period of twelve months from the time of acquisition, dispose of said prohibited or excess of holding to some qualified person, firm or corporation, under penalty of forfeiture. The lease shall be subject to mortgage, pledge, seizure for debt and the same other transactions as are other property rights in North Carolina. No transfer shall be of effect unless of court record, until entered on the books of the Fisheries Commissioner.

1909, c. 871, ss. 6, 9; 1919, c. 333, s. 6.

1910. Renewal of lease. The term of each lease granted under the provisions of this article shall be for a period of twenty years from the first day of April preceding the date of granting of said lease. At the expiration of the first lease, the lessee, upon making written application on the prescribed form, shall be entitled to successive leases on the same terms as applied to the last ten years of the first lease, for a period not exceeding ten years each.

1909, c. 871, ss. 7, 9; 1919, c. 333, s. 6.

1911. Forfeiture of lease for nonpayment. The failure to pay the rental of bottoms leased for each year in advance on or before the first day of April, or within thirty days thereafter, shall ipso facto cancel said lease, and shall forfeit to the State the said leased bottoms and all oysters thereon, and upon said forfeiture the Fisheries Commissioner is hereby authorized to lease the said bottoms to any qualified applicant therefor: Provided, that no forfeiture shall be valid, however, under the provisions of this section, unless there shall have been mailed by the Fisheries Commissioner to the last address of the lessee upon the books of the commissioner a thirty days notice of the maturity of said rental.

1909, c. 871, ss. 8, 9; 1919, c. 333, s. 6.

1912. Contest over grant of lease; time for contest; decision; appeal. If any person, within four months of the publication of the notice of granting of any lease, make claim that a natural oyster bottom, bed or reef exists within the boundaries of said lease, he shall, under oath, state his claim, and request the Fisheries Commissioner to cancel said lease: Provided, however, that each such claim and petition shall be accompanied by a deposit of twenty-five dollars. No petition unaccompanied by said deposit shall be considered by the commissioner. The Fisheries Commissioner shall, in person, examine into said claim, and, if the decision should be

against the claimant, the deposit of twenty-five dollars shall be forfeited to the State and deposited to the credit of the Fisheries Commission fund. Should, however, the claim be sustained and a natural bed be found within the boundary of the lease, the said natural bed shall be surveyed and marked with stakes or buoys, at the expense of the lessee, and the said natural bed be thrown open to the public fishery. If no such claim be presented within a period of four mouths, or if when so presented it fail of substantiation, as provided, the lessee shall thereafter be secure from attack on such account, and his lease shall be uncontested so long as he complies with the other provisions of this article. In each and every such case the decision of the Fisheries Commissioner shall be subject to review and appeal before a judge of the Superior Court, who shall render a decision without the aid of a jury, and his decision shall be final.

1909, c. 871, s. 9; 1919, c. 333, s. 6.

Part 3. Licenses and Taxes

1913. License to catch oysters; oath of applicant. Any person desiring to catch oysters from the public grounds and natural oyster beds shall make and subscribe to the following oath, before some officer qualified to administer oaths:

I, (state if owner, lessee, master, captain, mate, foreman, or agent of any boat used, or that may be used, in dredging oysters from the public grounds of the State), being an applicant for oyster license, do solemnly swear that I am a citizen of North Carolina, and have been a resident of the State for the two years next preceding this day; that my place of residence is now in County; that I will not, if granted license, employ any nonresident or unlicensed person as an assistant or serve as an assistant to any nonresident who is owner, lessee, master, captain, mate or foreman, or who has any interest in, or in the profits derived from, any boat that is used or that may be used in dredging oysters from the public grounds of the State, or unlicensed person, nor will I transfer, assign, or otherwise dispose of my license to any person, firm, or corporation; that I will not knowingly or willfully violate or evade any of the laws or regulations of the State relating to oyster industry; so help me, God.

He shall then present to and file said oath with the Fisheries Commissioner, assistant commissioner or inspector, who, if satisfied with the truth of the statement made in the oath of application, shall issue to him an oysterman's license in the following form:

State of North Carolina,..... County.
....., a resident of..... County, having this day made application to me for an oysterman's license, and having filed with me the oath prescribed by law, I do hereby grant to him license to catch oysters from the public grounds of this State from the fifteenth day of October,....., until the first day of next April.

Witness my hand and official seal, this the..... day of....., 19.....

Fisheries Commissioner, Assistant Fisheries Commissioner, or
Inspector (as the case may be).

Rev., s. 2409; 1903, c. 516, s. 7; 1905, c. 525, ss. 4, 6.

For making false affidavits, see this chapter, s. 1933.

1914. Filing oath; recording license; fees. The oath and a record of the license shall be kept by the Fisheries Commissioner, assistant commissioner, or inspector, and for issuing and recording the same he shall receive from the applicant a fee of twenty-five cents, which, together with all other license fees collected under this chapter, shall be paid over to the State Treasurer and constitute part of the Fisheries Commission fund. No fee shall be charged by the clerk for administering the oath.

Rev., s. 2409; 1903, c. 516, s. 7; 1905, c. 525, ss. 4, 6.

1915. Licensee to be resident, not interested in oyster boat. No person shall be licensed to catch oysters from the public grounds of the State who is owner, lessee, master, captain, mate, or foreman, or who owns an interest in or who is an agent for any boat that is used or that may be used

in dredging oysters from the public grounds of the State, who is not a bona fide resident of this State, and who has not continuously resided therein for two years next preceding the date of his application for license, and no nonresident shall be employed as a laborer on any boat licensed to dredge oysters under this subchapter who has an interest in or who receives any profit from the oysters caught by any boat permitted to dredge oysters on the public grounds of the State. Any person, firm or corporation employing any nonresident laborer forbidden by this section, upon conviction, shall be fined not less than fifty dollars nor more than five hundred dollars.

Rev., s. 2408; 1903, c. 516, s. 6; 1905, c. 525, s. 3.

1916. Tax on oysters exported from State. All oysters going out of the State in any boat or vessel shall pay a tax of two cents per tub.

1907, c. 969, s. 11; Ex. Sess. 1913, c. 42, s. 3.

An act levying a tax upon clams and oysters shipped out of county is constitutional.
Brooks v. Tripp, 135-159.

1917. Oyster dealer's license. The Fisheries Commissioner, assistant commissioner or inspector shall, upon application and the payment of a fee of fifty cents, grant to the applicant a dealer's license, authorizing the applicant to engage in the business of buying, purchasing, canning, packing, shucking or shipping oysters. Such license shall not be issued prior to the fifteenth day of November of any year and shall expire on the fifteenth day of March following. The assistant fisheries commissioner or inspector granting the license shall at once mail a duplicate to the Fisheries Commissioner. Nothing contained in this section (except as to New Hanover, Onslow and Pender counties) shall be deemed to require any license of persons engaged in the business of buying, purchasing, canning, packing, shucking or shipping oysters which were not taken or caught from the public grounds or natural oyster beds of the State: Provided, that in New Hanover, Onslow and Pender counties such license shall not be issued prior to the fifteenth day of October in any year and shall expire on the first day of April following.

Rev., s. 2411; 1903, c. 516, s. 9; 1905, c. 525, s. 6; 1907, c. 969, ss. 7, 13; 1915, c. 136, s. 3.

Fish and oysters, being food supply, come within the police regulation of the State: State v. Sermons, 169-285. *Failure to obtain a license applied for at an improper time will not excuse a dealer when buying from owner of private oyster bed:* State v. Sermons, 169-285.

1918. Monthly report of licenses to be filed. The Fisheries Commissioner, assistant commissioner or inspector who are authorized to issue license or to collect a license tax shall, on or before the fifteenth day of each month, mail to the Fisheries Commissioner a statement, showing all licenses issued during the preceding month, to whom issued and for what purpose, and the amount of tax collected by them from all sources under the oyster laws, and shall at the same time remit said amount direct to the State Treasurer. They shall at the same time mail to each inspector asking for the same a list of all persons to whom license has been issued and of all boats or vessels licensed, and for what purpose.

Rev., s. 2412; 1903, c. 516, s. 4; 1905, c. 525, s. 6.

1919. Oyster beds real property for taxation, etc. All grounds, taken up or held for the purpose of cultivating shellfish shall be subject to taxation as real estate, and shall be so considered in the settlement of the estates of deceased or insolvent persons.

Rev., s. 2380; 1887, c. 119, s. 9.

Part 4. Catching and Dealing in Oysters Regulated

1920. Close season for oysters; exceptions. If any person shall buy or sell oysters in the shell which have been taken from the public grounds or natural oyster beds of this State between the fifteenth day of April and the fifteenth day of October in any year, he shall be guilty of a misdemeanor and be fined not more than fifty dollars or imprisoned not more than thirty days: Provided, that oysters may be taken with hand-tongs from March fifteenth to May first and with dredges from March fifteenth to April fifth, in any year, to be used for planting on private grounds entered and held under the laws of this State, upon the condition further that they shall not be removed from said private grounds within a period of three months from time of planting: Provided further, that oysters may be taken with hand-tongs only for home consumption: Provided further, that coon oysters may be taken from November first to May first of each year in the waters of Onslow and Carteret counties.

This section, except as specifically provided, is inapplicable to New Hanover, Onslow and Pender counties.

Rev., s. 2383; 1907, c. 969, ss. 4, 13; 1913, c. 85; 1915, c. 120.

Section referred to in State v. Sermons, 169-285.

1921. Oyster dealers to keep records. All persons engaged in buying, packing, canning, shucking or shipping oysters shall keep a permanent record of all oysters either bought or caught by them, or by persons for them, when and from whom bought, the number of bushels and the price paid therefor. All these records shall at all times be open to the examination and inspection of the Fisheries Commissioner, assistant commissioner and inspector, and upon request shall be verified by the parties making them. If any person engaged in buying, packing, canning, shucking or shipping oysters taken or caught from the public grounds or natural oyster beds of the State shall fail to keep a permanent record of all oysters bought by him or caught by him, or by persons for him, when and from whom bought, the number of bushels and the price paid therefor, or shall fail upon demand to exhibit such record as required by law, or shall fail to verify the same, he shall be guilty of a misdemeanor, and be fined not exceeding fifty dollars or imprisoned not exceeding thirty days.

Rev., ss. 2396, 2418; 1903, c. 516, s. 5; 1915, c. 136, s. 2.

1922. Oyster measure. All oysters measured in the shell shall be measured in a circular tub with straight sides and straight, solid bottom, with holes in the bottom not more than one-half inch in diameter. The said measures shall have the following dimensions: A bushel tub shall measure eighteen inches from inside to inside across the top, sixteen inches from inside to inside chimb to the bottom, and twenty-one inches diagonal from inside chimb to top. All measures found in the possession of any dealer not meeting the requirements of this section shall be destroyed by said Fisheries Commissioner, assistant commissioner, or inspector. Any person using an unlawful measure for the sale or purchase of oysters shall be guilty of a misdemeanor.

Rev., s. 2417; 1903, c. 510, s. 12; 1907, c. 969, s. 10; Ex. Sess. 1913, c. 42, s. 2.

1923. Local modification as to oyster measures in New Hanover, Onslow and Pender counties. In New Hanover, Onslow and Pender counties all measures used for buying or selling oysters shall have a brand, to be adopted by the Fisheries Commissioner, stamped therein by said commissioner, assistant commissioner, or his lawful inspectors.

Rev., s. 2417; 1903, c. 516, s. 12; 1907, c. 969, s. 13.

1924. Illegal measures prohibited. If any person shall in buying or selling oysters use any measure other than that prescribed by law for the measurement of oysters, or if any dealer in oysters shall have in his possession any measure for measuring oysters other than that prescribed by law, he shall be guilty of a misdemeanor and be fined not exceeding fifty dollars or imprisoned not exceeding thirty days.

Rev., s. 2399; 1903, c. 516, s. 12.

1925. Dredging regulated as to territory and season. Any bona fide resident of the State duly licensed according to law and using a licensed boat or vessel, may use scoops, scrapes or dredges in catching or taking oysters from the fifteenth day of November in each year to the first day of April following, from the public grounds and natural oyster beds in the broad open waters of Pamlico Sound, Pamlico River, Neuse River and Shoal River, except in those portions of said sound and rivers in which the use of such instruments and implements is prohibited as herein provided. No person shall use any implement or instrument except hand-tongs in catching oysters in any bay, river, creek, strait, or any tributary of such, which borders upon or empties into Pamlico Sound, Pamlico River, or Long Shoal River, except as hereinafter provided; and any point inside of a line drawn from the farthest or extreme outward point of land or marsh on the one side to the farthest or extreme outward point of land or marsh on the opposite side of any creek, strait or bay shall be construed to be within the said creek, strait or bay for the purpose of this section. Nor shall any person use any implement or instrument except hand-tongs in the waters of Pamlico Sound from what is known as the reef or reefs in the eastern portion of said sound to the line of banks bordering its eastern shores; nor along the shores of Pamlico County inside of a line beginning at Maw Point and running to the west end of Brant Island, thence to Pamlico Point; nor in the waters of Pamlico Sound north of a line running from Long Shoal Light to Gull Shoal Live-saving Station, from the first day of February of each year to the fifteenth day of November, nor in any of the waters of Carteret County. And for the purpose of this section, the northern boundary of said county shall be a line extending from Swan Point to Harbor Island Light, thence a line to Southwest Straddle Light, thence a line to Northwest Point Light, thence a line to the middle of Ocracoke Inlet; nor in the waters of Neuse River above a line in said river running from Carbacon buoy to the western point of land at Pierce's Creek.

Rev., 2413; 1903, c. 516, ss. 13, 14, 15; 1905, c. 507, s. 2.

1926. Illegal dredging prohibited; evidence. If any person shall use any scoops, scrapes or dredges for catching oysters except at the times and in the places in this chapter expressly authorized, or shall between the fifth day of April and the fifteenth day of November of any year carry on any boat or vessel any scoops, scrapes, dredges or winders, such as are usually or can be used for taking oysters, he shall be guilty of a misdemeanor.

If any boat or vessel shall be seen sailing on any of the waters of this State during the season when the dredging of oysters is prohibited by law in the same manner in which they sail to take or catch oysters with scoops, scrapes or dredges, the said boat or vessel shall be pursued by any officer authorized to make arrests, and if said boat or vessel apprehended by said officer shall be found to have on board any wet oysters, or the scoops, scrapes, dredges or lines or deck wet, indicating the taking or catching of oysters at said time, and properly equipped for catching or taking oysters with scoops, scrapes or dredges, such facts shall be prima facie evidence

that said boat or vessel has been used in violation of the provisions of the law prohibiting the taking or catching of oysters with scoops, scrapes or dredges in prohibited territory, or at a season when the taking or catching of oysters with scoops, scrapes or dredges is prohibited by law, as the case may be.

Rev., ss. 2385, 2397; 1903, c. 516, ss. 13, 14, 15, 28.

1927. Dredging prohibited in certain waters of Pamlico Sound; exception. It shall be unlawful for any person to use any rakes, scrapes, scoops or dredges, or any other instrument or implement other than ordinary hand-tongs, for the purpose of taking or catching oysters from the public oyster grounds or natural oyster beds in any of the waters of Pamlico Sound or its tributaries north of a line running from West Bluff Bay to the center of Ocracoke Inlet; any person found guilty of the violation of this prohibition shall be punished by a fine not less than twenty-five dollars or imprisoned not less than thirty days.

1909, c. 559.

1928. Culling required; size limit. All oysters taken from the public grounds of this State, with whatsoever instrument or implement, shall be culled, and all oysters whose shells measure less than two and one-half inches in longest diameter, except such as are attached to a large oyster and cannot be removed without destroying the small oyster, and all shells taken with the said oysters shall be returned to the public ground when and where taken, and no oysters shall be allowed by the inspectors to be marketed which shall consist of more than ten per cent of such small oysters and shells, except "coon" oysters and oysters largely covered with mussels: Provided, these musseled oysters must not contain more than five per cent of shells or small oysters under regulation size.

Rev., s. 2415; 1903, c. 516, s. 11; 1905, c. 525; 1907, c. 969, s. 8; Ex. Sess. 1913, c. 42, s. 1.

1929. Local modification as to culling oysters in New Hanover, Onslow and Pender counties. In New Hanover, Onslow and Pender counties the preceding section is in force, except that the oysters shall be measured "from hinge to mouth," instead of in longest diameter.

Rev., s. 2415; 1903, c. 516, s. 11; 1905, c. 525; 1907, c. 969, s. 13.

1930. Taking unculled oysters for planting permitted to residents. Residents of the State of North Carolina shall be permitted to take oysters without culling from natural rocks at any time during the year for planting purposes only, in the waters of North Carolina.

1917, c. 153.

1931. Unculled oysters seized and scattered on public grounds. Whenever oysters are offered for sale or loaded upon any vessel, car or train, without having been properly culled according to law, the commissioner, assistant commissioner, or inspector shall seize the boat, vessel, car or train containing the same and shall cause the said oysters to be scattered upon the public grounds, and the costs and expenses of said seizure and transportation shall be a prior lien to all liens on said boat, vessel, car or train, and if not paid on demand the officers making the seizure shall, after advertisement for twenty days, sell the same and make title to the purchaser, and after paying expenses as aforesaid pay the balance, if any, into the oyster fund. For the towing of said boat, a charge of three dol-

lars and fifty cents per hour shall be charged against said boat for towage. The last sentence is not applicable in New Hanover, Onslow and Pender counties.

Rev., s. 2416; 1903, c. 516, s. 3; 1907, c. 969, ss. 9, 13.
See Section 1943.

1932. Shells to be bought and scattered on public beds. The Fisheries Commissioner is hereby empowered to expend one-half of the balance to the credit of the oyster fund on the fifteenth day of April in each year for the purpose of buying oyster shells and scattering the same on the natural oyster grounds of the State during the months of April and May.

Rev., s. 2421; 1903, c. 516, s. 20.

1932a. Oyster propagating. The Fisheries Commission Board of North Carolina is hereby authorized, empowered and directed to make all necessary and proper arrangements and to take the necessary steps to provide for the planting in the natural oyster beds of the public waters of North Carolina all shells, "coon oysters," or "seed oysters," or such other material as is well adapted for the propagation of oysters. The said board shall select such territory or planting ground in the public waters of North Carolina as is best adapted to the culture of oysters, and is most conveniently located with reference to existing beds or shells, "coon oysters" or "seed oysters," or other material well adapted for the propagation of oysters.

The board may designate the location and boundaries of said territory for such planting, and may further designate what oyster propagating materials shall be planted in said territory, the manner and time of said planting, and from what territory the said materials can be secured. The board shall carefully supervise, or cause to be carefully supervised by its properly designated agents, the planting of such beds and the distribution of said oyster propagating materials in said territory or beds.

The board may purchase the necessary shells, "coon oysters," "seed oysters," or other propagating materials, and may cause same to be distributed in a designated territory or territories, and the board may provide compensation for any work or labor connected with the procuring of said materials, or the planting or distributing of said materials; or the board may let out by private contract any part of the said procuring or distributing of said materials, or both: Provided, that the complete and entire cost of planting any of said propagating materials shall not exceed the sum of ten cents per bushel of said materials so distributed, and the board may not make any contract which will result in making the cost of planting of any quantity of said material exceed ten cents per bushel.

It shall be the duty of the board to plainly and clearly mark and define the limits and boundaries of any territory which may be planted with oyster propagating materials under the provisions of this act. The board may prohibit the taking of any oysters from any such territory or area for such length of time as the board may determine, and the board may regulate the manner of such taking as the board may determine: Provided, that the board shall prohibit any taking of oysters from any territory or area so planted for at least two years after such planting.

Any person violating any proper regulations or prohibitions of said board, or any person who shall take oysters from any territory or area within two years after the planting of oyster propagating material in such territory or area under the provisions of this act, shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine or imprisonment, or both, in the discretion of the court.

It shall be the duty of the board and its assistants to enforce the provisions of this act, and the regulations and prohibitions of the board may, under the authority of this act, be enforced in the same manner as is provided for enforcing the fishing laws of this State, and the regulations of the board adopted under the authority of said laws, and the board and its assistants shall have the same powers and duties and obligations with respect to the enforcement of this act as the board and its assistants have with respect to other fishing laws of this State.

1921, c. 132.

Part 5. Criminal Offenses Connected With Oyster Industry

1933. Perjury in application for oyster license. If any person shall make any false statement for the purpose of procuring any license, which may be required by law, to catch oysters, or to engage in the oyster industry, he shall be guilty of perjury and punished as provided by law.

Rev., s. 2390; 1903, c. 516, s. 17.

1934. Catching oysters without license. If any person shall catch oysters from the public grounds of the State without having first obtained a license according to law, or shall employ any person as agent or assistant, or shall as the agent or assistant of any person catch oysters from the public grounds, without all of said persons having first obtained a license according to law, he shall be guilty of a misdemeanor, and be fined not exceeding fifty dollars or imprisoned not exceeding thirty days.

Rev., s. 2386; 1903, c. 516, s. 6.

1935. Oyster dealing without license. If any person shall engage in the business of buying, canning, packing, shipping or shucking oysters taken or caught from the public grounds or natural oyster beds of the State, without having first obtained a license as required by law, he shall be guilty of a misdemeanor and be fined not exceeding fifty dollars or imprisoned not exceeding thirty days.

Rev., s. 2395; 1903, c. 516, s. 9; 1915, c. 136, s. 1.

This is valid exercise of the police power, and applies to a dealer buying from the owner of a private oyster bed: State v. Sermons, 169-285.

1936. Use of unlicensed boat in catching oysters. If any person shall use any boat or vessel in catching oysters, which boat has not been licensed according to law, and which is not in all respects complying with the law regulating the use of such vessels, he shall be guilty of a misdemeanor and shall be fined not more than fifty dollars nor less than ten dollars, or imprisoned not more than thirty nor less than ten days for the first offense, but for the second or subsequent offense he shall be guilty of a misdemeanor and punished at the discretion of the court.

Rev., s. 2387; 1903, c. 516, s. 8.

1937. Failure to stop and show license. If any person using a boat or vessel for the purpose of catching oysters shall refuse to stop and exhibit his license when commanded to do so by the Fisheries Commissioner, assistant commissioner, or any inspector, he shall be guilty of a misdemeanor and be fined not less than twenty-five dollars nor more than fifty dollars.

Rev., s. 2389; 1903, c. 516, s. 26.

1938. Displaying false number on boat. If any person shall display any other number on the sail than the one specified in their license, or

display a number when the boat or vessel has not been licensed, he shall be guilty of a misdemeanor and shall be fined not less than twenty-five dollars.

Rev., s. 2388; 1903, c. 516, s. 27.

1939. Catching oysters for lime. If any person shall take or catch any live oysters to be burned for lime or for any agricultural or mechanical purpose, he shall be guilty of a misdemeanor and be fined not exceeding fifty dollars or imprisoned not exceeding thirty days: Provided, that shells may be taken which do not contain more than five per cent of live oysters.

In New Hanover, Onslow and Pender counties the proviso to this section is not in force.

Rev., s. 2400; Code, s. 3389; 1885, c. 182; 1907, c. 969, ss. 12, 13.

1940. Catching oysters Sunday or at night. If any person shall catch or take any oysters from any of the public grounds or natural oyster beds of the State at night or on Sunday, he shall be guilty of a misdemeanor and be fined not exceeding fifty dollars or imprisoned not exceeding thirty days.

Rev., s. 2384; 1903, c. 516, s. 16.

1941. Unloading at factory Sunday or at night. If any person shall unload any oysters from any boat, vessel or car at any factory or house for shipping, shucking or canning oysters on Sunday, or after sunset or before sunrise, he shall be guilty of a misdemeanor and be fined not more than fifty dollars or imprisoned not more than thirty days: Provided, whenever any boat or vessel shall have partially unloaded or discharged its cargo before sunset, the remainder of said load or cargo may be discharged in the presence of an inspector.

Rev., s. 2394; 1903, c. 516, s. 16.

1942. Oyster-laden boats in canals regulated. No boat or vessel loaded with oysters shall be permitted by the inspectors of South Mills and Coinjock to pass through the canals, which does not have a certificate showing that the cargo has been inspected and the tax paid thereon.

Rev., s. 2420; 1903, c. 516, s. 17.

1943. Sale or purchase of unculled oysters. If any person shall sell or offer for sale, transport or offer to transport out of the State, or from one point in the State to another, or have in his possession any oysters which have not been properly culled according to law, he shall be guilty of a misdemeanor and be fined not exceeding fifty dollars or imprisoned not exceeding thirty days. It is unlawful for any person, firm or corporation to purchase oysters which have not been properly culled according to law, and for each violation shall, upon conviction, be fined two hundred dollars or be imprisoned in the discretion of the court.

In New Hanover, Onslow and Pender counties the purchase of unculled oysters is not forbidden.

Rev., s. 2392; 1903, c. 516, s. 3; 1907, c. 969, ss. 5, 13.

1944. Boat captain's purchase of unculled oysters. The captain of any run or buy boat who shall purchase oysters which have not been properly culled according to law shall, upon conviction, be fined two hundred dollars or imprisoned in the discretion of the court, and the having of unculled oysters aboard of his boat shall be prima facie evidence of his having purchased them. When any person, firm or corporation shall furnish

the captain of any run or buy boat with funds with which to purchase oysters, they shall not be held responsible for his acts, and shall not be deemed the purchaser of such oysters.

This section is inapplicable to New Hanover, Onslow and Pender counties.

1907, c. 969, ss. 5, 13.

1945. Larceny from private grounds. Any person who shall feloniously take, catch or capture or carry away any shellfish from the bed or ground of another shall be guilty of larceny and punished accordingly.

Rev., s. 2401; 1887, c. 119, s. 15.

As to venue in an action for wrongful conversion of oysters taken from oyster bed of plaintiff, see Makely v. Boothe, 129-11.

1946. Injury to private grounds; work at night. If any person shall willfully commit any trespass or injury with any instrument or implement upon any ground upon which shellfish are being raised or cultivated, or shall remove or destroy or deface any mark or monument lawfully set up for the purpose of marking any grounds, or who shall work on any oyster ground at night, he shall be guilty of a misdemeanor. But nothing in the provisions of this section shall be construed as authorizing interference with the capture of migratory fishes or free navigation or the right to use on any private grounds any method or implement for the taking, growing or cultivation of shellfish.

Rev., s. 2402; 1887, c. 119, s. 11.

ART. 6. SHELLFISH; LOCAL LAWS

1947. New Hanover, Onslow and Pender: Close season for oysters. If any person shall buy or sell oysters in the shell which have been taken from the public grounds or natural oyster beds of this State between the first day of April and the first day of October in any year, he shall be guilty of a misdemeanor and be fined not more than fifty dollars or imprisoned not more than thirty days: Provided, that oysters may be taken with hand-tongs only during the month of April in any year, to be used for planting on private grounds, entered and held under the laws of this State: Provided further, that oysters may be taken with hand-tongs only for home consumption: Provided further, that coon oysters may be taken from October first to May first of each year in the waters of Onslow and Carteret counties: Provided also, that it shall be lawful to take or catch oysters on public oyster grounds north of the line running from Point Peter to Duck Island, except between a line running from the east end of Hog Island to the beach, and from Ballast Point to the beach in Dare County, to be sold to residents or nonresidents, from April first to May fifteenth of each year, upon the payment by the purchaser of a tax of one-and one-half cents per tub.

This section applies only to the counties of New Hanover, Onslow and Pender.

Rev., s. 2383; 1903, c. 516, s. 22; 1905, c. 525, ss. 5, 8; 1907, c. 936, s. 4.

See s. 1920.

Referred to in State v. Sermons, 169-285.

1948. Brunswick, New Hanover and Pender: Clams protected. It shall be unlawful for any person, firm or corporation to take clams in the counties of Brunswick, New Hanover or Pender, from any of the waters thereof, for the purpose of bedding, for market, or for shipment from the said counties, from the twenty-fifth day of March to the fifteenth day of December of each year: Provided, however, that citizens of the said counties shall have the privilege at all times of the year to catch clams for sell-

ing in any of the said counties, in small quantities, for table use only. It shall be unlawful for any person, firm or corporation to purchase clams in the counties of New Hanover or Pender for the purpose of shipping from the said counties, or for any person, firm or corporation to ship from the said counties of Brunswick, New Hanover or Pender any clams at any time from the twenty-fifth day of March to the fifteenth day of December of every year, and in Brunswick County from the first day of March to the first day of December of every year. Any person, firm or corporation violating the provisions of this section shall be guilty of a misdemeanor and, upon conviction, shall be fined for each offense not exceeding fifty dollars or imprisoned not more than thirty days, in the discretion of the court.

1909, c. 879; P. L. 1913, c. 805.

1949. Brunswick: Clams; size limit. It shall be unlawful for any person or persons to catch any clams for use or for sale under one and one-half inches in diameter in the waters of Brunswick County; and upon conviction shall be guilty of a misdemeanor.

P. L. 1913, c. 805.

1950. Brunswick: Fire on oyster beds; raking. In Brunswick County it shall be unlawful for any person or persons to build a fire upon any natural oyster bed or rock at a place where oysters are in a state of growth. It shall be unlawful for any person or persons to rake with clam rake any oyster bed or oyster rock. Any person violating the provisions of this section shall be guilty of a misdemeanor, and shall be fined not exceeding fifty dollars, or imprisoned not exceeding thirty days.

1915, c. 138.

1951. Carteret: Clams in Newport River. It shall be unlawful for any person or persons, firm or corporation, between the fifteenth day of April and the fifteenth day of October of any year, to take any clams from the waters of Newport River and its tributaries, for the purpose of shipping, selling, marketing or bedding the same. Any person or persons, firm or corporation violating the provisions of this section shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than ten dollars for each offense, or imprisoned not exceeding thirty days, or both, in the discretion of the court.

1907, c. 840.

1952. New Hanover: Catching oysters in Myrtle Grove Sound. If any person shall take or catch any oysters from Myrtle Grove Sound, from Perrine's or Whitaker's creek to the headwaters of said sound in New Hanover County, from the first day of May until the first day of September, except for his own consumption, he shall be guilty of a misdemeanor, and fined not more than fifty dollars or imprisoned not more than twenty days.

Rev., s. 2426; Code, s. 3423; 1883, c. 358, ss. 1, 2.

1953. New Hanover: Clams in Masonboro Sound. It shall be unlawful for any person or persons to use any rake or other instrument with more than two prongs for the purpose of taking clams from any natural oyster rock or the other waters of Masonboro's Sound, in the county of New Hanover, between what is known as Fowler's Landing to Cockle Shell Point, in said county, a distance of about one mile. Any person violating the provisions of this section shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than fifty dollars or imprisoned not more than thirty days.

1909, c. 521.

1954. Onslow: Catching oysters and clams in certain waters. It shall be unlawful for any person to take or catch any oysters or clams from the natural oyster beds heretofore staked off and defined by the Shellfish Commissioners of Onslow County, or from any ground between the first days of April and October of each year, lying north of the following lines, to wit: Beginning at triangulation point "Mount Millow," on the western shore of New River, and running thence eastwardly to triangulation point "pond," the eastern shore of New River. It shall be unlawful for any person during the months of May, June and July of each year to take or catch oysters or clams from the natural oyster beds within the grounds lying south of the line mentioned above. Any person violating the provisions of this section shall be guilty of a misdemeanor and, upon conviction or confession in open court, shall be fined not exceeding fifty dollars, or imprisoned not exceeding thirty days. It shall be the duty of the Fisheries Commissioner to keep the lines marking the natural oyster beds in said waters properly marked and staked off.

1907, c. 949.

1955. Onslow: Catching oysters in Stump Sound. It shall be unlawful for any person, firm or corporation to catch, take or carry away from the oyster beds in the waters of Stump Sound, in Onslow County, between Alligator Bay and the Pender County line, any oysters, except for home consumption, between the first day of March and the twenty-fifth day of October in any year. Any person, firm or corporation violating this section shall, upon conviction, be fined not less than fifty dollars or imprisoned not less than thirty days, in the discretion of the court.

1915, c. 130.

1956. Onslow: Clams in Brown Sound and Queen's Creek. It shall be unlawful for any person, firm or corporation to catch or take any clams from the waters herein described between the first day of April and the first day of October. Said territory shall be as follows: Beginning at the mouth of Queen's Creek, in Onslow County, and running the various courses of the said Queen's Creek channel to Bogue Inlet, including all the waters south of said channel to the Horse Ford, between Brown Sound and New River: Provided, this shall not be so construed as to prohibit anyone from catching clams for their own table use only. Any person, firm or corporation violating any of the provisions of this section shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than fifty dollars or imprisoned not more than thirty days.

1909, c. 514.

ART. 7. TERRAPIN

1957. Drag-nets prohibited to nonresidents. If any person who is not a citizen and who has not resided in the State continuously for the preceding two years shall use any drag-net or other instrument for catching terrapin, he shall be guilty of a misdemeanor.

Rev., s. 2369; Code, ss. 3375, 3376.

Nonresident using drag-nets or other instrument not guilty if in the bona fide employ of one who has the right to take terrapin that way: State v. Conner, 107-932.

1958. Diamond-back terrapin protected. If any person shall take or catch any diamond-back terrapin between the fifteenth day of April and the fifteenth day of August of any year, or any diamond-back terrapin at any time of less size than five inches in length upon the bottom shell, or shall interfere with or in any manner destroy any eggs of the diamond-back terrapin, he shall be guilty of a misdemeanor, and shall be fined not less than five dollars nor more than ten dollars for each and every diamond-

back terrapin so taken or caught, and a like sum for each and every egg interfered with or destroyed: Provided, this section shall not apply to parties empowered by the State to propagate the said diamond-back terrapin; and the possession of any diamond-back terrapin between the fifteenth days of April and August shall be prima facie evidence that the person having the same has violated this section. It shall be the duty of all sheriffs and constables to give immediate information to some justice of the peace of any violation of this section.

Rev., s. 2370; Code, s. 3377; 1899, c. 582; 1881, c. 115, ss. 1, 6.

1959. Local—Carteret: Diamond-back terrapin. Any bona fide citizen of Carteret County is empowered to cultivate and propagate the diamond-back terrapin at one place in the waters of Carteret County: Provided, that he shall not interfere with the eggs laid by the wild diamond-back terrapin in its natural haunts, and that no undersized terrapin shall be taken for any purpose during the closed season prescribed by law in regard to catching terrapin.

The grantee of the privilege conferred by this section shall cultivate and propagate the diamond-back terrapin in a manner approved by the United States Bureau of Fisheries. If at any time the said grantee violates any of the laws of North Carolina regarding diamond-back terrapin, the privilege hereby conferred shall cease and he shall be guilty of a misdemeanor and, upon conviction, shall be fined or imprisoned in the discretion of the court.

Pr. 1913, c. 402; P. L. Ex. Sess. 1913, c. 58.

SUBCHAPTER III. FISH OTHER THAN SHELLFISH

ART. 8. SALT FISH AND FISH SCRAP

1960. Inspectors for salt fish; duties; fees. The board of county commissioners of every county where fish are packed for sale or shipment shall appoint and qualify one or more sworn inspectors of fish at or near all packing localities, whose duty it shall be to inspect all salt fish packed for sale or shipment; and all barrels, half-barrels and packages of fish inspected and approved by them shall be branded with the word "inspected" and the name of the inspector. Said board shall regulate and prescribe the duties, powers and fees of said inspector, which fees shall not exceed five cents per barrel of two hundred pounds net and two and one-half cents per half-barrel of one hundred pounds net and smaller packages, to be paid by the shipper. This section shall not apply to fishermen who may sell their fish to packers and shippers by weight or otherwise, as they may agree: Provided, that in any county where the board of county commissioners have not already appointed an inspector as is provided in this section, upon a petition of two or more persons it shall be mandatory upon the said board of county commissioners to immediately appoint an inspector in accordance with the provisions above. Upon failure to do so for five days after said petition has been filed, said board shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than five nor more than fifty dollars for each member or be imprisoned not more than thirty days: Provided, said petition be filed with the clerk of the board of commissioners five days before regular meeting of said board.

1909, c. 663, s. 1; 1911, c. 171.

1961. Salt fish sold by weight; marked on package. All salt fish packed for market shall be sold at their net weight, which shall be marked on every package; and any person packing or offering for sale salt

fish, fraudulently marking the net weight on the package, shall for each offense be guilty of a misdemeanor and fined not more than fifty dollars or imprisoned not more than thirty days, or both, at the discretion of the court.

1909, c. 663, s. 2.

1962. Salt mullet; special marking. Each package of salt mullets packed and offered for sale shall be marked or stamped "large," "medium" or "small," and all packages containing any other kind of fish shall be marked plainly the name of the fish contained, and any person who shall pack as principal or shall have the same done by others for him shall be deemed the packer and shall stamp his name and place of packing, together with net weight and size of fish, as prescribed in this section, on the head of each package before offering for sale or shipment, and on failure to pack and stamp as herein prescribed, or to pack or stamp said package falsely, so as to misrepresent the weight or size of the fish in said package, shall be guilty of a misdemeanor and fined not less than five nor more than fifty dollars for each offense, and may be imprisoned at the discretion of the court, not to exceed thirty days: Provided, this section shall not apply to packages containing less than fifty pounds net fish: Provided further, this section shall not apply to fishermen themselves, but shall apply only to merchants and others who may be classed as packers or brokers, within the proper meaning of the term.

1909, c. 663, s. 3.

1963. Measures for fish scrap and oil. For the purpose of uniformity in the trade of manufacturing fish scrap and oil in the State of North Carolina, there is hereby established a standard measure of twenty-two thousand cubic inches for every one thousand fish. Any person, firm, corporation or syndicate buying or selling menhaden fish for the purpose of manufacturing within the borders of this State, who shall measure the fish by any other standard (more or less) than is prescribed in this section, shall be guilty of a misdemeanor, and upon conviction shall be fined not more than fifty dollars or imprisoned not to exceed thirty days. Each day said measure is unlawfully used shall constitute a separate and distinct offense.

1911, c. 101.

ART. 9. COMMERCIAL FISHING; GENERAL REGULATIONS

1964. Right of fishing in grantee of land under water. Whenever any person acquires title to lands covered by navigable water under the sub-chapter Entries and Grants of the chapter entitled State Lands, the owner or person so acquiring title has the right to establish fisheries upon said lands; and whenever the owner of such lands improves the same by clearing off and cutting therefrom logs, roots, stumps or other obstructions, so that the said land may be used for the purpose of drawing or hauling nets or seines thereon for the purpose of taking or catching fish, the person who makes or causes to be made the said improvements, his heirs and assigns, shall have prior right to the use of the land so improved, in drawing, hauling, drifting or setting nets or seines thereon, and it shall be unlawful for any person, without the consent of such owner, to draw or haul nets or seines upon the land so improved by the owner thereof for the purpose of drawing or hauling nets or seines thereon. This section shall apply where the owner of such lands shall erect platforms or structures of any kind thereon to be used in fishing with nets and seines. Every person who shall wilfully destroy or injure the said platforms or structures, or shall interfere with or molest the owner in the use of such lands as aforesaid, or in

any other manner shall violate this section, shall be guilty of a misdemeanor. This section shall not relieve any person from punishment for the obstruction of navigation.

Rev., s. 2460; Code, s. 3384; 1874-5, c. 183, ss. 1-6.

The right of fishery rests in the State, and is subject to absolute control by the General Assembly: State v. Sermons, 169-285; Daniels v. Homer, 139-219; Brooks v. Tripp, 135-159; State v. Gallop, 126-979; State v. Woodward, 123-710; State v. Conner, 107-932; Rea v. Hampton, 101-51. *For additional annotations as to entries on land covered with water, see section 7543.*

There is no individual or property right of fishery in navigable waters: Bell v. Smith, 171-116; Daniels v. Homer, 139-219—unless acquired in some way from the State, Collins v. Benbury, 27-118. *The right of fishing in navigable waters is subordinate to the right of navigation:* Lewis v. Keeling, 46-299; Daniels v. Homer, 139-219.

Persons owning land on navigable streams may erect wharves next to their land up to deep water, may make entry and obtain title as in other cases, but they cannot obstruct navigation and they are confined to straight lines from their water fronts: Bond v. Wool, 107-139. *The right to wharves on water fronts is subject to legislative control and to the regulation of adjoining incorporated towns:* Ibid.

What is a navigable stream is a question for the jury: State v. Twiford, 136-603. *The test is the capability of use in the ordinary way, and not the extent of use:* Ibid, State v. Baum, 128-600; State v. Club, 100-477. *The effect of the ebb and flow of the tide as affecting the right to fishery:* Ingram v. Threadgill, 14-59.

1965. Seines prohibited to nonresidents; exceptions. If any person who has not resided in the State continuously for at least twelve months next preceding the day on which he shall begin to take fish shall use, or cause to be used, in any of the waters of the State, any weir, hedge, net or seine, for the purpose of taking fish for sale or exportation, or if any person shall assist in using, or be interested in using or causing to be used, in any such waters for the purpose aforesaid, any weir, hedge, net, seine or tongs in the use of which any such nonresident person may have an interest, he shall be guilty of a misdemeanor. Nothing herein shall prevent any person from fishing with seines hauled to the shore at any fishery, the title to which fishery or any interest therein having been acquired by such person by purchase or inheritance. This section shall not extend to servants employed to fish by any persons allowed to fish in the navigable waters of the State. No nonresident of the State shall make any sale, assignment or transfer of any fishery, weir, or other fishing apparatus, or privilege mentioned in this section, to any citizen of the State for the purpose of operating and working said fishery, weir, or other fishing apparatus as aforesaid, under the name and ownership of such citizen, or as the servant or employe of any citizen; and any sale, transfer or assignment not made bona fide and for a full consideration shall be null and void.

Upon affidavit founded upon information and belief that any nonresident of the State is operating any such fishery, weir, or other fishing apparatus as aforesaid in the waters of the State, under such sale, assignment or transfer, as the pretended servant or employe of any citizen of the State, it shall be the duty of the justice of the peace before whom said affidavit is made to issue a warrant against the said nonresident and citizen under whose name said fishery is operated, and upon conviction the said offenders shall be guilty of a misdemeanor, and shall, for every offense, be fined not more than fifty dollars, or imprisoned not more than thirty days. Upon the said trial, the burden of proof shall be on the defendants to prove the bona fides and full consideration of said sale or transfer.

Rev., s. 2467; Code, ss. 3379, 3380; R. C., c. 81, s. 5; 1844, c. 40, s. 1; 1876-7, c. 33; 1883, c. 171.

Nonresident using drag-net or other instrument not guilty if in the bona fide employ of one who has the right to take terrapin that way: State v. Conner, 107-932.

1966. Menhaden fishing forbidden to nonresidents. It is unlawful for any person, firm or corporation, not a citizen or resident of the State of North Carolina, to catch, capture, or otherwise take any menhaden or fat-backs within the waters of the State of North Carolina to the extreme limits of the State's jurisdiction in and over said waters; and for the pur-

poses of this act the following boundaries are hereby declared to be the boundaries to which the waters of the said State extend, to wit: a distance of three nautical miles, measured from the outer beach or shores of the State of North Carolina out and into the waters of the Atlantic Ocean; and any portions or portion of any water within a distance of three nautical miles from said waters of the Atlantic Ocean to any beach or shore of said State shall be deemed, for the purposes of this act, within the waters of said State: Provided, that any citizen or resident of the State of North Carolina, whether person, firm, or corporation, may take, capture or catch any menhaden or fatbacks at any time, subject to existing laws.

It is unlawful for any nonresident person, persons, firm or corporation knowingly to buy, cook or manufacture into fertilizer any menhaden or fatbacks caught, taken or captured contrary to the provisions of the above.

Any person, persons, firm or corporation violating any of the provisions of this section shall be guilty of a misdemeanor, and upon conviction in any county opposite the place at which said act is done, shall be fined not less than twenty-five hundred dollars or imprisoned for two years, or both, in the discretion of the court: Provided, that each catch, or taking, or purchase, or act of manufacture, shall constitute a distinct and separate offense.

It is the duty of the Fisheries Commissioner or assistant commissioner, whenever an affidavit is delivered to him stating that the affiant is informed and believes that said act is being violated at an particular place, to go himself or send a duly authorized deputy to such place, investigate the same, and such officer shall seize and remove all nets, machinery, or other appliances and paraphernalia setting or being used in violation of this section, sell same at public auction and apply the proceeds of such sale to the payment of costs and expenses of such removal, and pay any balance remaining into the school fund of the county nearest to the place where the offense is committed.

1911, c. 102; 1923.

1967. Menhaden fishing with nets regulated. If any person shall catch any menhaden or fatbacks within the waters of the State of North Carolina, to the extreme limits of the State's jurisdiction as defined in the preceding section, in any purse net or purse seine with a bar of less than one inch and with a mesh of less than two inches, or shall knowingly cook or manufacture for fertilizer any menhaden or fatbacks caught in any net or seine having bars of less than one inch or having meshes of less than two inches, at any place within the State of North Carolina, he shall be guilty of a misdemeanor, and for each and every offense shall be fined not less than five hundred dollars or imprisoned for one year, or both, in the discretion of the court. Every person found fishing for menhaden or fatbacks within three miles of the shore of any county shall be presumed to have violated this section. And all such persons, firms or corporations shall be subject to all the pains and penalties denounced in this section, and they may be prosecuted in the courts of any county in this State. All persons aiding and abetting shall be guilty as principals.

This section is inapplicable to the counties of Dare, Brunswick, Pender and New Hanover.

Rev., s. 2438; 1905, cc. 274, 508.

1968. Poisoning streams. If any person shall put any poisonous substance, for the purpose of catching, killing or driving off any fish, in any of the waters of a creek or river, he shall be guilty of a misdemeanor.

Rev., s. 3417; Code, s. 1094; 1883, c. 290.

1969. Fish offal in navigable waters. If any person shall throw, or cause to be thrown, into the channel of any of the navigable waters of the State, any fish offal, in any quantity that shall be likely to hinder or prevent the passage of fish along such channel, or if any person shall throw or cause to be thrown into the waters known as the Frying Pan, tributary to the Great Alligator River, in Tyrrell County, any fish offal in any quantities whatsoever, he shall be guilty of a misdemeanor.

Rev., s. 2444; Code, ss. 3386, 3389, 3407.

Navigable waters defined in annotations under section 1964.

1970. Sunday fishing. If any person fish on Sunday with a seine, drag-net, or other kind of net, except such as is fastened to stakes, he shall be guilty of a misdemeanor, and fined not less than two hundred nor more than five hundred dollars, or imprisoned not more than twelve months.

Rev., s. 3841; Code, s. 1116; 1883, c. 338.

This section does not apply to Onslow County so far as established seines are concerned. 1885, c. 171; 1889, c. 23.

1971. Robbing nets. If any person shall, without authority of the owner, take any fish from any nets of any kind, he shall be guilty of a misdemeanor.

Rev., s. 2478; Code, s. 3418; 1883, c. 137, s. 5.

Fish in the public waters of the State do not become private property until reduced to possession: State v. Gallop, 126-979.

1972. Vessel injuring nets. If any master or other person having the management or control of a vessel or boat of any kind, in the navigable waters of the State, shall willfully, wantonly and unnecessarily do injury to any seine or net which may be lawfully hauled, set or fixed in said waters for the purpose of taking fish, he shall forfeit and pay to the owner of such seine or net, or other person injured by such act, one hundred dollars, and shall be guilty of a misdemeanor.

Rev., s. 2465; Code, ss. 3385, 3389.

Fishing without permission, see Game Laws, s. 2127.

A company injuring fishing nets in a navigable stream by unnecessarily and wantonly running its boats into same is liable for damages: Hopkins v. R. R., 131-463.

1973. Injury to fishing structures. If any person shall willfully destroy or injure any platform or structure on any land covered by navigable waters, which land has been duly entered and granted and over which the owner has, according to law, acquired a prior right of fishery, or shall interfere with or molest the owner in the use thereof or of said prior right of fishery, he shall be guilty of a misdemeanor. If any person shall willfully destroy or injure any platform or structure erected in any navigable water by the owner of the adjoining land for the purpose of drawing or hauling nets or seines thereon, or shall interfere with or molest the owner in the use of any such lands, he shall be guilty of a misdemeanor.

Rev., ss. 3414, 3415; Code, s. 2753; 1874-5, c. 183, ss. 2-4.

1974. Obstructing passage of fish in streams. If any person shall set a net of any description across the main channel of any river or creek, or shall erect, so as to extend more than three-fourths of the distance across any such river or creek any stand, dam, weir, hedge or other obstruction to the passage of fish, or shall erect any stand, dam, weir or hedge in any part of any river or creek that may be left open for the passage of fish, or who, having erected any dam where the same was allowed, and shall not make and keep open such slope or fishway as may be required by law to be kept open for the free passage of fish, he shall be guilty of a misdemeanor:

Provided, that this section shall not apply to the creeks in the sound between Bogue Inlet and Brown inlet, in Onslow County, except the main channel thereof.

Rev., s. 2457 Code, ss. 3387, 3388, 3389; 1909, c. 466, s. 1.

As to obstructing passage of fish in water-courses, see State v. Glenn, 52-321; McLaughlin v. Mfg. Co., 103-100.

General Assembly has complete authority to make provision for removal of any obstruction and nuisance to fishing in the waters of this State: Rea v. Hampton, 101-51.

Obstructions may be removed by private party under certain circumstances: Daniels v. Homer, 139-219; Hetrick v. Page, 82-65; Rea v. Hampton, 101-51.

1975. Dams for mills and factories regulated; sluiceways. No person shall place or allow to remain any dam for mill or factory purposes in the Chowan River between Holliday's Island and the Virginia line; in the Meherrin River between its mouth and the Virginia line; in the Roanoke River from the mouth of the Cashie River to the Virginia line; in the Dan River from the crossing of the State line to a point nearest Danbury; in the Neuse River from New Bern to Neuse station in Wake County; in Contentnea Creek from its junction with the Neuse to the junction of Turkey and Moccasin creeks; in the Cape Fear River from Wilmington to the junction of Haw and Deep rivers, and thence in Haw River to the line of Chat-ham and Alamance counties, and also in Deep River to the Randolph and Chatham line; in Rocky River from its mouth to the crossing of the Pitts-boro and Ashboro road; in the New Hope River from its mouth to the Orange County line; in Northeast Cape Fear River from Wilmington to South Washington; in Black River from its mouth to the junction of the Coharie; in the South River from its junction with the Black River to the crossing of the Fayetteville and Warsaw public road; in Lumber River from the State line to the northern boundary of Robeson County; in the Yadkin River from the State line to Patterson's factory; in Elk Creek, a tributary of the Yadkin River, from its mouth to Daniel Wheeler's in Watauga County; in Stony Fork Creek, a tributary of the Yadkin River, from its mouth to John Jones's old store; in Ararat River from its mouth to the bridge at Mount Airy; in North Fork of Catawba from its mouth to Turkey Cove; in Broad River from the State line to Reedy Patch Creek; in Green River from its mouth to its junction with North Pacolet; in the Tennessee River from the State line to its junction with the Nantahala; in Pigeon River from the State line to the Forks of Pigeon; in the French Broad River from the State line to Brevard and in the Swannanoa River; in Toe River from the State line to the confluence of the North and South Forks of Toe; in New River from the State line to the point of divergence from the western boundary line of Alleghany County; in Little River in Johnston County from its junction with Neuse River in Wayne County to the Wake County line; in Cane River from the mouth of same to mouth of Bolling Creek in Yancey County, also Old Fields of Toe on North Toe River in Mitchell County; Johns River from its mouth to the forks of said river near Carrell Moore's in Caldwell County; Catawba River from the South Carolina line to the town of Old Fort in McDowell County, unless the owner thereof shall construct thereon at his own expense a sluiceway for the free passage of fish of a width not less than three feet nor more than ten feet: Provided, such sluiceway shall be constructed according to plans and specifications to be furnished by the Board of Agriculture, and shall not injure the water-power of such owner: Provided further, in order to ascertain whether sluiceways will or will not injure the water-power aforesaid, the owner of such dam may select two disinterested persons and the Board of Agriculture two others, who may select the fifth person to aid in the arbitration and settlement of such complaint: Provided further, this section shall not apply to Pigeon River in Haywood County: Provided

also, it shall be lawful for any person to remove any obstruction in the main channel of the Cape Fear River to the width of one hundred feet, for the free passage of fish in the county of Harnett. This proviso, however, shall not apply to any dam or obstruction placed or kept upon said river by the Cape Fear Iron and Steel Company.

Rev., s. 2462; Code, s. 3410; 1901, c. 208; 1880, c. 34; 1881, cc. 21, 32, 250, 320; 1905, c. 278; P. L. 1913, c. 758.

Section merely referred to, in the case of the obstruction in French Broad River, in Gwaltney v. Land Co., 111-566.

1976. Sluiceways and fish passages; regulation and enforcement. The sluiceways referred to in the preceding section shall be so constructed and placed upon such dams by the owner thereof within sixty days after notice has been given by the Board of Agriculture, under a penalty of one hundred dollars per day for each day thereafter that such dam shall remain without such sluiceway, and shall be kept open by him during the months of February, March, April, May, June, October and November, and at all other times when there is sufficient water to supply both the water-power and the sluiceway, a fine of fifty dollars per day for each day said sluiceway shall be allowed to remain closed, and any person who shall fish with net, trap, hook and line, or who shall take in any way whatsoever any fish within two hundred feet of said sluiceway, shall be subject to a fine of one dollar for each fish so taken, or a fine of fifty dollars for each offense, or imprisonment for thirty days.

No other obstruction to the passage of fish shall exist or be built between the designated points in the streams mentioned in this and the preceding section unless an opening of not less than twenty-five feet, and not more than seventy-five feet, embracing the main channel of said streams, shall be made by the owner of such obstructions within twenty days after notice from the Board of Agriculture to make such opening under penalty of fifty dollars per day for each day such obstruction shall remain unopened. Said notice shall be served by the sheriff of the county, and his return shall be prima facie evidence of notice in any suit for such penalty.

Rev., ss. 2463, 2464; Code, ss. 3411, 3412; 1880, c. 34, ss. 2, 3.

See further as to obstructing streams and fish passages, Rivers and Creeks, ss. 7367, 7377.

General Assembly has complete authority to make provision for the removal of any obstruction and nuisance to fishing in the waters of this State: Rea v. Hampton, 101-51.

ART. 10. COMMERCIAL FISHING; LOCAL REGULATIONS

Part 1. Sounds and Inlets

1977. Inlets; nets in, regulated. If any person shall set any pound net, dutch net or hedge net within two miles of Oregon Inlet or Hatteras Inlet, or within ten miles of New Inlet in Dare County, or shall between the first day of January and the first day of May following of any year, set or operate any seine or stationary nets of any kind in the main channels within three miles of the inside mouths of Ocracoke, Hatteras, Oregon, or any other inlet north of Ocracoke Inlet, connecting the waters of the Atlantic Ocean with any of the sounds or other inland waters, or shall fish with seines or nets of any description in the waters of Bear Inlet or Brown's Inlet or within one mile of Bear Inlet or Brown's Inlet, on the eastern or western beach of said inlets, except as regularly established fisheries on said Bear or Brown's Inlet beaches, or shall fish with seines or nets on the inside of said Bear or Brown's Inlet within one-fourth mile of said inlets between the first day of October and the first day of April, he shall be guilty of a misdemeanor.

Rev., s. 2450; 1893, c. 216; 1903, c. 724; 1903, c. 416.

1978. Pamlico and sounds to the north: Net stakes to be removed. Every person who shall set or use any net in the waters of Pamlico, Croatan, Currituck or Albemarle sounds or their tributaries, except Perquimans River, shall be required to pull up and remove their broken, decayed and abandoned net stakes within thirty days from the day the nets were taken from them, and not later than the first day of June, and any person failing to pull up and remove their stakes, as required by this section, shall be guilty of a misdemeanor, and fined not more than fifty dollars or imprisoned not more than thirty days.

Rev., s. 2448; Code, ss. 3382, 3414; 1883, c. 69; R. C., c. 81, s. 8; 1844, c. 40, s. 7; 1852, c. 13; 1893, c. 147; Ex. Sess. 1908, c. 19, s. 1.

For Currituck County, the above section is applicable, except that the words "broken, decayed and abandoned" before "net stakes" are omitted. Ex. Sess. 1908, c. 19.

One engaged in seine fishing on the shores of Albemarle Sound has the right to remove stakes put up to operate a pod-net, when his seine fishery is interfered with by them: Hettick v. Page, 82-65.

1979. Pamlico, Croatan and Albemarle sounds and inlets: Fishing regulated. If any person shall set or fish any net, seine or appliance of any kind for catching fish at any place within a radius of two and one-half miles either way from Roanoke Marshes Lighthouse, at a distance more than five hundred yards from the shore of Roanoke Island or the mainland on the western side of Croatan and Pamlico sounds, except that on the western side of Pamlico and Croatan sounds fishing shall be permitted in that territory extending one thousand yards from the shore, beginning at the two-and one-half-mile limit heretofore defined and extending to the southern end of the Roanoke Marshes, on the Pamlico Sound side, and to the north end of the same marshes of the Croatan side, but in neither case shall the nets within this one-thousand-yard limit be within one and one-quarter miles in any direction from the Roanoke Marshes Lighthouse; or shall set or fish any pound or dutch net on the eastern side of Pamlico Sound within ten miles of the Roanoke Marshes Lighthouse, except such as shall be fished within one thousand yards of Roanoke Island or Hog Island shores; or shall set or fish any dutch or pound net on the eastern side of Pamlico Sound more than two thousand yards west of a line running south-southeast (magnetic) from Big Island to a point on the twelve-foot curve westerly of Chicamacomico or south of said point more than two thousand yards from the twelve-foot curve, as marked on the chart of the Coast and Geodetic Survey, corrected from data obtained to November twenty-second, one thousand nine hundred and four; or shall set or fish any dutch or pound net on the west side of Pamlico Sound, in said sound, extending into the water more than two thousand yards from the shore; or shall set or fish any pound or dutch net in Croatan Sound farther from the shore than one-fifth of the width of said sound at that point; or shall set or fish any net, seine or appliance of any kind for catching fish at any place within the area of one-sixth the width of the sound or river on either side of a line passing through the middle of the channel of Croatan Sound and the middle of Albemarle Sound, up Chowan River as far as Cannon's Ferry, and other tributaries of Albemarle Sound (provided, this clause does not apply to seines used on the rivers); or shall set or fish any pound or dutch net in the Albemarle Sound more than two thousand yards from the shore of the mainland, or in Chowan River farther from the shore than one-third of the width of said river, at the place where said nets are fished or set, or within one-fourth mile of any wharf used by a steamer on said river; or shall set or fish any net or appliance of any kind for catching fish within one mile on either side of a line running westerly or southwesterly from the center of New Inlet to an intersection with the line extending from Big Island southwest (magnetic), or within one mile on

either side of a line six miles long running southwesterly from the center of Oregon Inlet to a point two thousand yards west of the continuation of the said line running from Big Island south-southeast (magnetic), or within one mile on either side of a line six miles long running from the center of Hatteras Inlet in a northwesterly direction, these restricted areas to include the channels extending from Oregon, New and Hatteras inlets, respectively, he shall be guilty of a misdemeanor and be fined not less than fifty dollars or imprisoned not less than thirty days, in the discretion of the court. The provisions of this section shall apply only to that part of each year in which shad and herring fishing are permitted by law in the several waters, except that in Albemarle and Croatan sounds the provisions of this section shall apply for the entire year, as far as it relates to pound nets. The Fisheries Commissioner is authorized, in determining the boundaries of the restricted areas on either side of the Roanoke Marshes, to run straight lines from the stake two thousand yards from the shore in the two-and-one-half-mile radius from Roanoke Marshes Lighthouse to the stake five hundred yards eastward from the point of Roanoke Marshes, and shall run straight lines from the stake one-fifth the width of Croatan Sound in the two-and-one-half-mile radius from Roanoke Marshes Lighthouse south to the stake five hundred yards from the eastward point of Roanoke Marshes; that the boundary lines marking the restricted areas in these sounds shall be run in straight lines from stake to stake, located at certain points, but said stakes not to be in any case more than three miles apart. The place of trial for offense under this section shall be the county opposite where the act was committed.

1909, c. 540, s. 3.

Fishing in prohibited waters is a public nuisance, and any person injured thereby may abate it without unnecessary damage to the property: Daniels v. Homer, 139-219; Rea v. Hampton, 101-51; Hetrick v. Page, 82-65.

1980. Albemarle and Croatan sounds and inlets: Drift nets. If any person shall drift or fish any drift nets between the first day of February and the first day of May of any year, within two miles of the mouth of any river emptying into Albemarle Sound, or within three miles of any seine-beach on the Albemarle or Croatan sounds while being fished, or within ten miles of Ocracoke, Hatteras, Oregon or New inlets, or within ten miles of the Roanoke Marshes, he shall be guilty of a misdemeanor, and be fined not less than fifty dollars or imprisoned not less than thirty days: Provided, the people of Dare County shall be allowed to use drift nets for herring.

Rev., s. 2446; Code, s. 3396; 1881, c. 274, ss. 1, 2; 1883, c. 145.

1981. Albemarle Sound and tributaries: Nets and net stakes. No person shall set or fish any dutch net or pound net in Roanoke River, Cashie or Middle and Eastmost rivers, or within two miles of the mouth of said rivers, or within one mile of the mouth of any other river emptying into Albemarle Sound, or less than two miles in width at its mouth, and any such net set within one mile of the mouth of any other river emptying into said sound shall not extend into the main channel at its mouth. No person shall set or fish with a dutch net or pod net within half a mile to the eastward or westward of the outside windlasses or snatch-blocks of any seine fishery in operation on said sound; and any such net set or fished within one mile of such windlasses or snatch-blocks of any seine fishery in operation shall run at right angles to the shore from the shore, and shall not extend farther into the sound from the water's edge than the distance from such windlasses or snatch-blocks to the line of such net; and all persons who shall set or fish any such net in said sound shall pull

up and remove the stakes used for the same by the first day of June next succeeding the fishing season, and if any person shall set or fish any dutch net or pod net in said sound in violation of this section he shall be guilty of a misdemeanor, and be subject to a penalty of three hundred dollars: Provided, that dutch nets may be used in Cashie River two and one-half miles from its mouth, if they do not extend more than one-third the width of said river from the shore, and such nets may be along the sound shore on the Bertie County side between the following points along said shore, to wit: commencing at the mouth of Cherry Tree Cut Branch, Kentrock Field and Landing Field, and running around the shore to the mouth of Morgan Swamp, thence to Rock Spring Branch, and that any nets set or fished within that line shall not extend from the shore in any direction a greater distance than six hundred and fifty yards measured at high water, and within this distance of six hundred and fifty yards is to be included the nets, hedges and all parts thereof.

Rév., s. 2439; Code, s. 3383; 1889, c. 122; 1891, c. 322; 1895, c. 245; 1899, c. 310; 1899, c. 412; 1909, c. 540, s. 2; 1911, c. 23.

One engaged in seine fishing on the shores of Albemarle Sound has the right to remove stakes put up to operate a pod-net, when his seine fishery is interfered with by them: Het-trick v. Page, 82-65.

1982. Albemarle Sound in certain parts: Gill nets. It is unlawful to set, fish or use any gill nets of any description, either stake, anchor or drift, for commercial purposes in the Albemarle Sound west of a line drawn straight from Batt's Island on northern side of Albemarle Sound to mouth of Scuppernong River on south side of said sound, except between the hours of four o'clock and eleven o'clock p.m., and then said nets or combinations of such nets shall not be more than six hundred yards in length, and there shall not be allowed to any boat more than six hundred yards of such gill nets.

It is the duty of the Fisheries Commissioner or other persons entrusted with the enforcement of the fishery laws of the State to seize and remove any gill net of any description being set, setting or being used in violation of this article, or which is more than six hundred yards in length, and to dispose of the same as provided by law.

It is the duty of the Fisheries Commissioner to keep a deputy, assistant or inspector on the waters of Albemarle Sound to enforce this section and the other fish laws applicable to Albemarle Sound, and the failure of the Fisheries Commissioner to perform this duty shall render his official bond liable to the penalty prescribed in the third preceding section which regulates fishing in Pamlico, Croatan and Albemarle sounds and inlets.

Any person, firm or corporation violating the provisions of this section shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than two hundred dollars (one-half to go to the informant and the other half to the school fund), or imprisoned in the discretion of the court.

1911, c. 18; 1913, c. 43.

1983. Albemarle Sound off Tyrrell County: Gill nets. It is unlawful for any person, firm or corporation to set or use for catching fish any anchor gill net within fourteen hundred yards of any stake gill net of from four-and-one-half-inch to five-and-one-half-inch mesh in that part of the Albemarle Sound embraced in the following area: Commencing on the east shore of the Scuppernong River where said river empties into the Albemarle Sound, thence north to the middle of the Albemarle Sound, thence along the middle of the Albemarle Sound to a point in the sound opposite Newberry Pier, thence to the shore at Newberry Pier, and along the sound shore to the beginning. Any person, firm or corporation violating

the provisions of this section shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than fifty dollars or be imprisoned for not more than thirty days.

1915, c. 112.

1984. Albemarle Sound in certain parts: Anchor, drift and stake nets. If any person shall set or fish an anchor, drift or staked gill net in the waters of Albemarle Sound or its tributaries west of a line running from Skinner's Point Buoy to Roanoke Lighthouse, or if any person shall east of said line set or fish in the waters of said sound or its tributaries any anchor, drift or staked gill net longer than one thousand yards, or combination of such nets longer than one thousand yards; or shall set or fish any anchor, drift or staked gill nets within one and one-half miles of any seine grounds on the said sound or rivers emptying therein, or within one-half mile of any dutch-net stand where the same is now located in said sound or rivers, unless said seine ground or dutch-net stand is owned by the person setting such nets; or shall set or fish any line or row of anchor, drift or staked gill nets anywhere in said sound or rivers nearer to any other row of such nets than half the length of the longer of said row, he shall be guilty of a misdemeanor and shall be fined not exceeding one hundred dollars or be imprisoned not more than thirty days. And any person who shall willfully violate the provisions of this section shall forfeit and pay for each violation of the same the sum of one hundred dollars, to be recovered in a civil action by any one who will sue therefor; one-half of said recovery shall inure to the benefit of the public school fund: Provided, that nothing in this section shall prevent the setting of gill nets in the Chowan River or its tributaries above Holliday's Island: Provided further, that one-third of said stream, along the channel, shall be kept free from any class of net: Provided further, that no pound net shall be set within one hundred yards of any other pound net set by another person in Chowan River, north of Holliday's Island.

Rev., s. 2451; 1897, c. 51; 1899, c. 41; 1899, c. 130; 1911, c. 104.

1985. Albemarle Sound: Nets near wharves or Norfolk Southern Railroad bridge. It is unlawful to set any pound or dutch nets in Albemarle Sound nearer to either side of the Norfolk Southern Railroad bridge across said sound than three hundred yards, or to set any stake, drift, or anchor gill nets nearer to either side of said bridge than one-half mile. It is unlawful to set any net of any description in front of a wharf, that is, between the pier of any wharf now used as a landing for any steamboat and the middle of the stream on which the wharf is built. Any person violating the provisions of this section shall be guilty of a misdemeanor and fined not less than one hundred dollars or imprisoned in the discretion of the court.

1911, c. 163.

1986. Croatan Marshes: Nets and fishing apparatus near. If any person, for the purpose of taking fish, shall, between the first day of February and the first day of May of the same year, use or cause to be used, at or within half a mile of the marshes separating the waters of Croatan and Pamlico sounds, any weir, hedge, net or seine, he shall be guilty of a misdemeanor.

Rev., s. 2424; Code, s. 3378; R. C., c. 81, s. 4; 1844, c. 40, s. 3.

1987. Currituck Sound: Nets used regulated. It is unlawful for any person or persons, firm or corporation to fish in the waters of Currituck Sound with a drag, haul, seine or any other kind of net of whatsoever kind

with a bar of less than one and three-eighths inches, or a mesh of less than two and three-quarters inches. Any person or persons, firm or corporation violating any of the provisions of this section shall be guilty of a misdemeanor and fined not more than fifty dollars or imprisoned not more than thirty days, in the discretion of the court.

1913, c. 29.

1988. Pamlico Sound: Nets to be set north and south. Every net (unless the same be a drag-net and hauled to the shore) which may be used for catching shad in that portion of the waters of Pamlico Sound lying between a line drawn eastwardly from Stumpy Point and Mount Pleasant in Hyde County to a point ten miles south of Hatteras Inlet in said sound, shall be set and fixed in said waters in a direction from north to south, and shall not be used in any other manner; and any person offending against this section shall, for every offense, forfeit five dollars.

Rev., s. 2433; Code, s. 3381; 1889, c. 261; R. C., c. 81, s. 7; 1844, c. 40, s. 6.

1989. Pamlico Sound; tributaries, rivers and waters of Carteret County: Nets regulated. There shall be no pound or other tarred nets with a mesh smaller than one and one-half inches bar, before tarring, fished in Pamlico, Tar and Neuse rivers, Pamlico Sound, and the waters of Carteret County, and there shall be no pound or stake nets fished within three miles of the inside mouths of Ocracoke Inlet, nor in the principal channel or channels of said inlet, nor within one mile of said channel or channels until the said channel or channels reach deep water, at any time, and the other inlets north of it shall be left under section 1979 of this chapter. No stake or pound net which shall be fished in any of the waters mentioned in this section, without being tarred, shall have a mesh of less than one and three-eighths inches bar. The bunt, which must not be longer than thirty yards, of all seines and haul-nets fished in the waters of Pamlico, Tar and Neuse rivers and Pamlico Sound shall not be smaller than one and one-eighth inches bar net, but nothing herein shall apply to nets fishing for menhaden. Any person violating any of the provisions of this section shall be guilty of a misdemeanor, and shall be fined not less than one hundred dollars and imprisoned at the discretion of the court: Provided, this section shall apply only to that part of the year beginning January fifteenth and ending May fifteenth.

1907, c. 948, ss 1-4; 1909, c. 540, s. 4.

1990. Pamlico Sound; waters of Pamlico County: Nets regulated. It is unlawful for any person or association of persons or corporation to set or cause to be set, fish or cause to be fished, in Pamlico Sound from the mouth of Bay River to Neuse River and in Neuse River, more than four pound, pod or dutch nets in any one string, with leads of more than two hundred yards in length for each pound or net, or at a greater distance than one and one-half miles from the shore at right angles or thereabouts from the place opposite where such net may be set; and it is unlawful for any person, association of persons or corporation to set or cause to be set any pound, pod or dutch net or string of nets of any kind, or fish any such nets nearer to a net or string of nets already set and being fished than five hundred yards, and no pound, pod or dutch net nor any lead thereto shall be set other than at right angles or thereabouts from the shore. It is unlawful for any person or persons, firm or corporation, to use, set or fish any drag or haul net in the waters of Smith's Creek or its tributaries in Pamlico County.

It is unlawful for any person or persons or corporation to set or fish or cause to be set or fished any pound, pod or dutch net in the waters of

Pamlico County on the south or east side thereof, or in Neuse River, of a size smaller than one-quarter mesh or bar measure or two and one-half inches string measure.

Any person, persons or corporation who shall violate any of the above provisions shall be guilty of a misdemeanor, and shall be fined not exceeding fifty dollars or imprisoned not exceeding thirty days, in the discretion of the court, and shall also forfeit such net or nets any portion of which may be set beyond such distance from the shore or set in any manner or place forbidden in this section.

It is the duty of the sheriff of Pamlico County, upon reliable information that any person or persons or corporation has set or caused to be set any pound or dutch net, or that any portion of any such net has been set at a greater distance than one and one-half miles from the shore from the mouth of Bay River to Neuse River and from Neuse River to Baird's Creek, or nearer than five hundred yards to any nets already set, to ascertain the truth thereof, and if such report be correct, take into possession at once any such net so set, and after ten days public notice at three public places in his county sell the same at public sale, and from the proceeds he shall retain the actual cost of taking such net, and a fee for services of two and one-half dollars and the remainder of said proceeds he shall pay one-half to the informer and the other to be paid to the county treasurer, who shall place the same to the credit of the public school fund of the county.

It is lawful for any person or persons to set pound, pod or dutch nets in the manner prescribed in this section in the waters of Pamlico County and in Neuse River upon the north side thereof from its mouth to Baird's Creek, at any time during the year, and from the northern end of outer Swan Island to Adams' Creek on the south side of Neuse River, from the first day of January to the first day of May.

P. L. 1913, c. 752, s. 5.

1991. Roanoke Sound: Nets in. It is unlawful for any person or persons to set any pound nets or any other kind of nets east of a line beginning at a point one thousand yards east of Hog Island Point and running direct to a point two hundred yards east of Broad Creek Point; thence following the east shore of Roanoke Island to Ballast Point; or set or fish any pound or dutch nets or any other kind of net in that portion of Roanoke Sound north of a line extending from Ballast Point east ten degrees north farther from the shore than one-fifth of the width of said sound. Any person violating any of the provisions of this section shall be guilty of a misdemeanor and, upon conviction, shall be fined or imprisoned at the discretion of the court. This section shall not prevent the setting of pound nets inside of Shallow Bag Bay, and shall apply only to that part of each year in which shad and herring fishing is permitted by law in the several waters.

1911, c. 26.

Part 2. Streams

1992. Black River: Fishing regulated. It is unlawful for any person or persons to catch or take fish, either by rod or hook, seines, nets, striking, muddying the pools or lagoons, feeling by hand, gigging, or in any other method or in any manner whatsoever, during the months of May, June, July and August, excepting Friday and Saturday of each week in each year, in the waters of Black River and its tributaries, in the counties of Pender and Bladen. Any person violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction fined not

less than five dollars nor more than ten dollars or imprisoned not more than thirty days, one-half of the fine to be paid to the informer and one-half to the school fund.

1909, c. 478; 1923.

1993. Black River and Mingo Creek: Only hook and line. If any person shall fish in that part of Black or South River which is in Sampson and Cumberland counties, or in that part of Black or South River in Harnett County below Averasboro and Clinton road, or in Mingo Creek in said counties below the Averasboro and Clinton road, and Stony Run in Harnett County, otherwise than with a hook and line, he shall be guilty of a misdemeanor, and upon conviction shall be fined not less than twenty-five dollars nor more than fifty dollars, or imprisoned not less than ten days nor more than thirty days: Provided, that this act shall not be construed to prevent the setting of nets in any millpond located on said streams by the owner or owners of said millpond where such nets are not placed in or across the main run of said stream.

Rev., s. 247; 1895, c. 276; P. L. L. 1921, c. 185; P. L. L. (Ex. Sess.) 1921, c. 237.

1994. Black River in Bladen, Cumberland and Sampson: Close season. It is unlawful for any person to catch with hook and line, seine, or destroy with gun or any gig or striking iron the fish in the waters of Black River and its tributaries in the counties of Bladen, Cumberland and Sampson from the fifteenth of May until the fifteenth of August in each year. Any person violating this section shall be guilty of a misdemeanor, and shall be fined not less than ten dollars nor more than twenty-five dollars, or imprisoned in the county jail not more than thirty days, for each and every offense.

P. L. 1913, c. 623, s. 1.

1994a. It shall be lawful to fish with hook and line only in any of the streams of Cumberland and Harnett counties and in that portion of Black River in Sampson County above Maxwell's Bridge at any time, except that between April first and June first of each year it shall be unlawful for any person to take or kill in any manner any bass, chub, trout, jack or pike from any of said waters.

P. L. L. 1923.

1995. Black River and Six Runs: Obstructing channel; lay days. It is unlawful for any person or persons to fish in that part of Black River from the Cape Fear River to the mouth of Great Coharie, and in that part of Six Runs River from its mouth to where it is crossed by the Atlantic Coast Line Railroad, with any wire trap, net or contrivance whatever that will obstruct the free passage of fish in said waters, from the first day of March to the fifteenth day of June of each year, except from six o'clock p.m. to six o'clock a.m. on Tuesday, Thursday and Saturday nights. It is unlawful for any person or persons fishing as permitted in the foregoing to leave, or permit being left, in the parts of the said streams defined in the foregoing, any wire trap, net or contrivance whatever that will obstruct the free passage of fish, or any parts of any such wire trap, net or contrivance, at any time during which such fishing is prohibited. Any person or persons violating the provisions of this section shall be guilty of a misdemeanor, and be fined not more than fifty dollars or imprisoned not more than thirty days.

1907, c. 169.

1996. Cape Fear River: Nonresidents may not fish. If any person who is a nonresident of the State shall catch fish, for marketable purposes, in the waters of the Cape Fear River, or any of its tributaries, he shall be guilty of a misdemeanor and, upon conviction, shall be fined or imprisoned at the discretion of the court.

Rev., s. 3416; 1895, c. 230.

1997. Cape Fear River: Nets and seines regulated. If any person shall use any net for catching sturgeon in the waters of New Hanover County, the bars of the meshes of which net shall be less than ten inches in the diamond; or shall haul a seine or nets or pod fish within three hundred yards of any established fishery, except with the nets of such fishery; or shall set or fish any stationary nets in the waters of the Cape Fear River, except on the east side thereof and in New Hanover County; or shall set any net in said river otherwise than east or west; or shall own or control more than one line of nets; or shall operate or fish any shad nets in Cape Fear River below the mouth of Brunswick River between the twentieth day of April and the fifteenth day of January; or shall set any set net or stationary net of any kind in the Cape Fear River north of the mouth of the Brunswick River, or in the Brunswick River; or shall operate any drift net in the Cape Fear River of more than three hundred yards in length, or shall catch shad in said river with seines or nets from the twentieth of April to the fifteenth of January, he shall be guilty of a misdemeanor. The possession of a sturgeon net with meshes of a size smaller than allowed by this section shall be *prima facie* evidence of having fished the same. In setting nets in Cape Fear River as allowed by this section the following rules shall prevail: They shall begin at a point one hundred yards from the edge of the channel on the east side of said river and running thence due east one hundred and twenty yards, then leaving a gap of one hundred and twenty yards. Then from the east end of said gap another net may be set one hundred and twenty yards only, and to continue in the same proportion, always requiring a gap of one hundred and twenty yards to intervene between each one hundred and twenty yards of nets so set, and no net or sets of nets of any kind shall be placed opposite said gaps, within a distance of a half mile of same, and none of the nets so set shall be nearer than a half-mile of the west shore of said Cape Fear River. An established fishery in the meaning of this section is one where there is a camp for the use of the hands, and where the seine or nets and boats used by the said fishery are kept, and where the said fishery was established prior to the first day of January, one thousand eight hundred and ninety-nine.

Rev., s. 2468; Code, s. 3403; 1901, c. 173; 1899, c. 440; 1881, c. 280; 1907, c. 752.

1998. Cape Fear River: Fish traps regulated. If any person shall construct, operate or maintain any fish traps in the Cape Fear River, or shall fail to remove all traps now in the channel of said river within sixty days from the first day of March, one thousand nine hundred and five; or shall fail on the first day of June of each year to remove the slats or fingers from any fish trap allowed to be operated in said river under this section, he shall be guilty of a misdemeanor. This section shall not apply to Brunswick or New Hanover counties or to a fish trap which extends to not more than one-third the channel of said river.

Rev., s. 2483; 1905, c. 500.

1999. Cape Fear and Northeast rivers: Nets in. It is unlawful to fish with dutch, pod, fyke or other pound nets, or stake or stationary nets, or nets of like kind, in the waters of the Cape Fear River below the mouth

of Black River, twelve miles above Wilmington, or in the waters of Northeast River below the Castle Hayne bridge. Drift nets shall be permitted in the waters of the Cape Fear River within the territory as above described in this section, and its tributaries, between February first and May first of each year. Any person violating the provisions of this section shall be guilty of a misdemeanor and fined not less than fifty dollars or imprisoned not less than thirty days.

1909, c. 841; P. L. 1911, c. 278.

2000. Cape Fear, Northeast and Black Rivers: Obstructing fish; fishing between Saturday evening and Monday evening. If any person shall with seines or nets of any kind catch any fish in the waters of the Cape Fear River from its mouth to the Bladen County line, or in the waters of the Northeast Cape Fear or Black rivers in Pender County between six o'clock p.m. on Saturday and six o'clock p.m. on Monday, or shall obstruct the free passage of fish in the waters of said rivers, he shall be guilty of a misdemeanor.

Rev., s. 2470; 1885, c. 226; 1887, c. 71; 1907, c. 811.

2001. Cape Fear River, northeast branch: Seines, nets and traps. If any person shall fish in the northeast branch of the Cape Fear River with seine, net or trap, from the twenty-third day of February to the first day of July of any year, between the hours of six o'clock p.m. on Saturday and six o'clock p.m. on Monday of each week, or shall at any time use more than one seine at a time in any fishing hole in said river, or use, set or place in said river any hedge, trap or other obstruction which will prevent the free passage of fish up said river, which said hedge, trap or other obstruction shall extend more than one-third across the main channel of the said river, he shall be guilty of a misdemeanor. This section shall not apply to that portion of said river which lies between the city of Wilmington and a point on said river known as The Three Cypress, twelve miles distant from said city of Wilmington.

Rev., s. 2469; 1889, c. 182; 1891, c. 198.

2002. Goose and Oyster creeks: Drag or haul nets unlawful. It is unlawful for any person or persons to fish with a drag or haul net of any description in the waters of Oyster Creek and its tributaries and Goose Creek or its tributaries (said creek being a dividing line between the counties of Pamlico and Beaufort). Any person or persons violating the provisions of this section shall be deemed guilty of a misdemeanor and shall be fined or imprisoned, or both, in the discretion of the court.

1907, c. 222; P. L. 1911, c. 381.

2003. Little River: Obstructions in. If any person shall place any obstruction in Little River, dividing the counties of Pasquotank and Perquimans, and allow it to remain for a longer time than ten days, he shall be guilty of a misdemeanor, and fined not less than five dollars nor more than ten dollars: Provided, nothing in this section shall be so construed as to prohibit citizens from fishing with dip-nets in said river during the months of March and April in each year.

Rev., s. 2443; Code, s. 3400; 1881, c. 18.

2004. Lumber River: Close season for traps in. It is unlawful for any person to set any trap for the purpose of catching fish in Lumber River or its tributaries in Columbus and Robeson counties, between the first day of April and the first day of September in any year. Any person

violating the provisions of this section shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than fifty dollars or imprisoned not more than thirty days.

1907, c. 608.

2005. Lumber River and waters of Robeson, Columbus, Hoke and Scotland: Fishing regulated. It is unlawful for any person, firm or corporation to fish with seine, trap, nets, or by gigging, muddying, striking, dynamiting, shooting, or using lime or other chemicals by which fish may be killed, in Lumber River or any of its tributaries, or other rivers, lakes, ponds or swamps of Robeson, Columbus, Hoke and Scotland counties: Provided, that gill nets may be set in these waters during six months in each year, beginning with October and ending with March: And provided further, that in Robeson and Hoke counties owners of private lakes and ponds may fish therein with seines, nets or traps from July first to September thirtieth.

Any person, firm or corporation violating this section shall be guilty of a misdemeanor and, on conviction, shall be fined not more than fifty dollars nor less than ten dollars, the fine to be paid to the school fund of the county in which the offense was committed, or imprisoned not more than thirty days nor less than ten days in the county jail, the county commissioners of said counties having the privilege of sending the said person or persons so convicted to the chain-gang of their respective counties or to hire them out in case there is no chain-gang. The police force of said counties have full power and authority to arrest, without warrant, any and all persons violating this section.

P. L. 1915, c. 358; P. L. 1917, cc. 368, 415.

2006. Moccasin River and Big and Little Contentnea creeks: Obstructions and nets in. It is unlawful for any person or persons to hedge or otherwise obstruct the free passage of water, fish, timber, rafts or boats in the run of Moccasin River or Big Contentnea Creek, from Rountree's Bridge in Wilson County to the mouth of said river or creek, or to make any like obstruction in the run of Little Contentnea Creek. It is unlawful for any person or persons to fish with traps of any description in the waters of either of said streams, except from Rountree's Bridge to Barefoot's Mill: Provided, no hedge or trap shall obstruct more than one-third of the waters of Contentnea Creek. Any person who shall violate any of the provisions of this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than five dollars and not more than fifty dollars, or imprisoned not more than thirty days; and one-half of the fine so imposed shall be paid to the person who reports such offenses to the proper lawful officer, and the other half to the common school fund of the county in which the misdemeanor is committed.

1907, c. 615; Ex. Sess., P. L. 1913, c. 252.

2007. Neuse and Trent rivers: Stationary, set, or dutch nets. No person or association of persons shall set or place or cause to be set or placed any stationary, set or dutch nets in either Neuse or Trent rivers above the point of conflux of the said Neuse and Trent rivers. That no person or association of persons or corporation shall set, cause to be set, fish or cause to be fished, use or cause to be used any dutch net, pound net or other stationary trap net or seine of similar description, by whatever name known, in the waters of Neuse River above Wilkinson's Point, on Pamlico side. Any person or association of persons setting or placing any nets, as described above, on any day or part of a day, above the point of conflux of the said Neuse and Trent rivers, shall be guilty of a misdemeanor. Any

person or association of persons or corporation setting or placing or causing to be set or placed any nets, as described above, on any day or part of a day, above Wilkinson's Point, in Neuse River, shall be guilty of a misdemeanor. Any person or association of persons or corporation violating the provisions of this section shall, upon conviction, be fined fifty dollars or imprisoned thirty days for each and every violation. Any party who is the informant against any one violating this section shall, upon conviction of such person so violating the section, receive one-half of the fine prescribed.

1909, c. 801; P. L. 1911, c. 616.

2008. Neuse and Trent rivers: Size of seine bars regulated. If any person shall use any drag net or seine with bars of less size than one and a quarter inches in the Neuse and Trent rivers, or in any of the tributaries thereof, except for the purpose of catching herring, from the fifteenth day of January to the fifteenth day of May of each year, he shall be guilty of a misdemeanor, and fined not less than five nor more than fifty dollars for every offense. This section shall not apply to the waters of the Neuse and its tributaries above the Wayne and Johnston County line.

Rev., s. 2454; Code, s. 3395; 1881, c. 146, ss. 1, 2.

2009. Neuse River: Obstructions in, by dams, nets, etc. Any person who shall construct a dam, put in traps, dutch net, wire seine, or anything else in Neuse River between its mouth and the Falls of Neuse in Wake County, for the purpose of obstructing the passage of fish in said river, shall be guilty of a misdemeanor and be fined not exceeding fifty dollars or imprisoned not exceeding thirty days: Provided, this section shall not apply to seines, set nets, running or skimming nets: Provided, this section shall not prevent the use of traps in Wayne County, where the trap and its wings do not extend more than one-third across the stream.

Rev., s. 2474; Code, s. 3422; 1885, c. 391; 1893, c. 354; 1883, c. 301, ss. 1, 2; 1895, c. 403; 1901, c. 395.

2010. Neuse River: Certain nets regulated. If any person shall use or cause to be used any dutch net, pound net, or other stationary trap net, or seine of similar description, by whatever name known, in the waters of Neuse River for the purpose of taking fish therefrom, except the ordinary set net in use in said river prior to the first day of January, one thousand eight hundred and ninety-seven, he shall for each day's use thereof as aforesaid forfeit and pay the sum of fifty dollars. The penalties herein created shall be recoverd by warrant before any justice of the peace in the counties of Carteret, Craven and Pamlico or Lenoir, and shall be applied to the use of the public schools of said counties, and such offender, in addition to the penalties contained in this section, shall be guilty of a misdemeanor and shall be fined not less than one hundred dollars nor more than five hundred dollars, or imprisoned in the county jail not less than six months nor more than twelve months: Provided, that a resident and citizen of the State may fish with dutch, trap or pound nets in the waters of Neuse River on the Pamlico side of said river between the mouth of said river and Upper Broad Creek not more than five hundred yards from the shore.

Rev., s. 2453; Code, s. 3397; 1897, c. 145; 1899, cc. 299, 422, 435; 1901, c. 74; 1903, c. 704; 1905, c. 817.

2011. Pamlico and Tar rivers: Dutch, etc., nets prohibited. If any person shall set down or fish any dutch, pod, fyke or pound net or net of like kind in the waters of Pamlico or Tar rivers or their tributaries except in the manner, and in the part, and during the time, which such nets are

by law allowed to be fished, he shall be guilty of a misdemeanor, and shall be fined not less than fifty dollars nor more than one hundred dollars, and shall be imprisoned in the county jail not less than thirty and not more than sixty days.

Rev., s. 2428; Code, s. 3417; 1903, c. 52.

2012. Pamlico and Tar rivers: Lay days. If any person, from the fifteenth day of February to the tenth day of May of every year, from twelve o'clock meridian of Saturday until sunrise Monday morning of each week, shall fish any seine, set net, drift net, or any other net of any name or kind whatever, in the waters of Pamlico or Tar rivers and tributaries, except bow or skim nets, he shall be guilty of a misdemeanor.

Rev., s. 2427; Code, s. 3416; 1883, c. 137, s. 3.

2013. Pamlico River: Dutch, etc., nets allowed under regulation. It shall be lawful to fish with dutch, pod, fyke or other pound nets, or nets of like kind, in the waters of Pamlico River below a line beginning on the southern shore of Pamlico River at Maule's Point, and running due north to a point on the northern shore of said river: Provided, that no dutch, pod, fyke or pound net, or other net of like kind, shall extend out in said river more than one-fourth of the distance across said river from the shore, and that none of said dutch, pod, fyke or pound nets shall be set, placed down or fished nearer to each other than five hundred yards, measuring up and down the river; nor shall they be placed, set down or fished within five hundred yards of any seine beach in actual use for hauling a seine, nor within one mile of the mouth of Bath Creek: Provided, no nets of the kind enumerated in this section, or other nets of like kind, shall be placed down, set or fished in said rivers between the tenth day of May and the first day of July in any year. Any person violating the provisions of this section shall be guilty of a misdemeanor, and shall be fined not less than fifty dollars nor more than one hundred dollars, in the discretion of the court.

Rev., s. 2429; Code, s. 3417; 1903, c. 52; 1909, c. 540, s. 1; 1909, c. 700.

2014. Perquimans River: Nets in, regulated. If any person shall fish with any seine or set any dutch net or hedge within one mile of a straight line commencing at Stephenson's Point on the north side of Perquimans River and running in a southwesterly direction to the nearest point of land on the south side of said river known as Belgrade Bluff, or shall haul any seine or set any dutch net or other kind of net so as to extend beyond the middle of said river at any part thereof, he shall be guilty of a misdemeanor.

Rev., s. 2441; 1893, c. 147, ss. 1, 2, 4.

2015. Roanoke River: Drift nets in, regulated. It is unlawful to fish any drift nets in the Roanoke River over twenty yards in length, and no net shall drift within three hundred yards of another net, and no two nets shall drift abreast of each other. Any person violating the provisions of this section shall be guilty of a misdemeanor and fined not less than one hundred dollars or imprisoned in the discretion of the court.

1911, c. 163, s. 3.

2016. Scuppernong River and Lake Phelps: Nets in, regulated. It is unlawful for any person, firm or corporation to set or in any manner fish with more than one hundred yards of gill nets within the waters of Lake Phelps or Scuppernong in Tyrrell and Washington counties, or to set or in any manner fish with more than one pound, pod or dutch net, and shall be

restricted to the months of February, March and April of each year. Any person, firm or corporation violating this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than fifty dollars or imprisoned not more than thirty days.

1909, c. 378; 1911, c. 129.

2017. Scuppernong River: Nets obstructing channel or near bridges. If any person shall set any kind of a fish weir or pod net, gill net or net of any kind in the Scuppernong River, using more than one-half of the channel of said river, or within one hundred yards of the public bridges at Columbia and the Cross Landing, crossing said river, he shall be guilty of a misdemeanor and fined a sum not to exceed fifty dollars, or imprisoned not to exceed thirty days: Provided, this section shall not apply to the hauling of seines.

Rev., s. 2445; Code, s. 3408; 1885, c. 18; 1903, c. 91.

2018. Scuppernong River and tributaries: Obstructions and nets in. It shall be unlawful for any person, firm or corporation to set or fish any net or place any other obstruction of any kind within one hundred and fifty yards of the mouth of any creek or drainway emptying into Scuppernong River; or for any person, firm or corporation to set or fish any net or place any obstruction more than one-third of the total width of Scuppernong River at the point of setting the same: Provided, this section shall not apply below Cross Landing bridge. Any person, firm or corporation violating the provisions of this section shall be guilty of a misdemeanor.

P. L. 1919, c. 88.

2019. Scuppernong River: Nets near Norfolk and Southern Railroad bridge. It is unlawful for any person to fish any pound or dutch nets within fifty yards of the Norfolk and Southern Railroad bridge across Scuppernong River. Any person violating this section shall be guilty of a misdemeanor and punished by a fine of not more than one hundred dollars nor less than twenty five dollars, in the discretion of the court.

Ex. Sess. 1908, c. 82; 1909, c. 119.

2020. Trent River: Use of nets regulated. If any person shall set any trap, dutch, pound or pod net of any description whatever in Trent River, or shall at any time extend his set nets more than one-third the distance across the Trent River from either side, or shall set any net nearer to any other net than one hundred yards either on the same or on the opposite side of the river, or shall fish with seines or set nets of any description in Trent River from its mouth to upper Tucker Bridge, between the hours of twelve o'clock noon on Saturday and twelve o'clock noon on Monday of each week, or shall set or haul a net or seine of any description between the town of Trenton and Brown's Mill on said river from the sixteenth day of May to the first day of August in each year, he shall be guilty of a misdemeanor and shall be fined not less than five dollars nor more than ten dollars or be imprisoned not less than ten nor more than thirty days.

Rev., s. 2455; Code, s. 3397; 1893, c. 447; 1897, c. 294.

Part 3. Counties

2021. Counties on Pamlico Sound: Size of fish caught or sold. It is unlawful for any person to buy, sell, offer for sale, or to have in his possession any blue-fish, trout or drum under eight inches in length, or any mullet under six inches in length, or any croakers, spots and hogfish under five inches in length, or sea mullet, flounders, mackerel and hickory shad less than eight inches long, or butterfish and steerfish less than four and

one-half inches long, at any time during the year. Any person or persons violating any of the provisions of this section shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than ten dollars nor more than fifty dollars. This section shall only apply to the counties of Beaufort, Carteret, Dare, Hyde and Pamlico.

1909, c. 474, ss. 3, 4; 1909, c. 906.

2022. Brunswick, New Hanover and Pender: Size of bars in nets. If any person shall use in any of the waters of Brunswick, New Hanover and Pender counties any nets, seines, set-downs, fish traps, or any other nets of any description for the purpose of taking fish, the bars of the meshes of which nets, seines, set-downs or fish traps shall be less than one and one-eighth inches in length, he shall be guilty of a misdemeanor.

Rev., s. 2470; 1885, c. 226; 1887, c. 71.

2023. Brunswick, Cumberland, New Hanover, Sampson and Harnett: Close season for fish. If any person shall catch or destroy with seines, nets, firearms, bows and arrows, or by muddying or stirring the waters, or by striking any fish of any kind in the waters of Black or South rivers, or the waters of Big Coharie, Little Coharie, Bear Skin and Big swamps in the counties of New Hanover, Sampson, Cumberland and Harnett, and of the waters of Six Runs in the counties of New Hanover and Sampson, and of the waters of the Cape Fear River in the counties of New Hanover and Brunswick, and of the northeast branch of the Cape Fear River in the county of New Hanover, between the fifteenth days of May and August of each year, he shall be guilty of a misdemeanor, and fined not to exceed five dollars.

Rev., s. 2472; Code, s. 3409; 1889, c. 414; 1871-2, c. 152; 1879, c. 283; 1881, c. 369.

2024. New Hanover, Onslow and Pender: Purse nets and seines for food fish. It is unlawful for any person, firm or corporation to catch any food fish in a purse seine or purse net in any waters within the limits of New Hanover, Onslow and Pender counties, extending to the extreme limits of the State's jurisdiction in and over such waters, making the boundaries of said counties to which said waters shall extend to be the distance of three nautical miles, measured from the outer beach or shores of said counties out into the waters of the Atlantic Ocean. Any waters within a distance of three miles of any beach or shore of said counties shall be deemed the waters of said counties for the purpose of this section. It is unlawful for any person, firm or corporation to purchase, trade for, or deal in, or sell any food fish caught as is set forth above. Any person, firm, corporation, partnership or association who knowingly rents, leases or permits to be used any purse seine or purse net, rents or leases any vessel, boat or steamer upon which is used a purse seine or purse net in the catching of food fish in the waters of said counties shall be guilty of a misdemeanor. Any person who furnishes information upon which any person, firm or corporation shall be convicted of a violation of any of the provisions of this section shall be entitled to one-half of the fine imposed therefor.

P. L. 1913, c. 717.

2025. Beaufort: Nets regulated in certain creeks. It is unlawful for any person or persons to use or fish with any drag nets, purse nets, drop nets, fyke nets, thrash nets or any set or gill nets longer than thirty yards on top line, in the waters of Bath Creek, Blount's Creek, Jordan's Creek, Pungo Creek, Wright's Creek, or their tributaries, in Beaufort County, during the months of March, April, May, June and July of each and every

year. Any person or persons violating the provisions of this section shall be guilty of a misdemeanor and, upon conviction, fined not exceeding fifty dollars or imprisoned not more than thirty days for each offense.

1909, c. 586.

2026. Beaufort: Fishing by residents in Bath Creek. It is lawful for any person or persons who are resident citizens of Beaufort County to fish with any kind of nets, except pound nets or purse nets, in the waters of Bath Creek from Bath Creek bridge to the mouth of said creek.

P. L. 1911, c. 547.

2027. Beaufort: Certain nets in Blount's Creek. It is unlawful for any person or persons to use or fish with any drag net or slash net in the waters of Blount's Creek or its tributaries. Any person or persons violating the provisions of this section shall be guilty of a misdemeanor and, upon conviction, shall be fined not exceeding fifty dollars or imprisoned not exceeding thirty days for each offense.

P. L. 1911, c. 120.

2028. Beaufort: Certain nets in Durham and Lee's creeks. It is unlawful for any person to catch fish with seine, drag nets, purse nets, thrash nets or hauling nets of any description in the waters of Durham Creek, Lee's Creek, or their tributaries, in Beaufort County. Any person violating this section shall be deemed guilty of a misdemeanor and, on conviction, shall be fined not less than five nor more than ten dollars for each and every offense.

1907, c. 439.

2029. Beaufort: Certain nets in Nixon's Creek. It is unlawful for any person or persons to use or fish with any drag nets, purse nets, or pound nets in the waters of Nixon's Creek in Beaufort County. Any person or persons violating the provisions of this section shall be guilty of a misdemeanor and, upon conviction, fined not exceeding thirty dollars or imprisoned not more than twenty days for each offense.

P. L. 1911, c. 525.

2030.—Beaufort: Certain nets in North Creek. It is unlawful for any person or persons to use or fish with any drag nets, purse nets, drop nets or fyke nets in the waters of North Creek and its tributaries, and South Creek and its tributaries, in Beaufort County. Any person or persons violating the provisions of this section shall be guilty of a misdemeanor and fined not exceeding fifty dollars or imprisoned not more than thirty days for each offense.

1907, c. 629; P. L. L. 1921, c. 493.

2031. Bladen: Manner of fishing in Brown Marsh and Horseshoe swamps. It is unlawful for any person to fish with a seine or by muddying the water or by means of any lime, dynamite or any other such material or substance in Brown Marsh and Horseshoe swamps in Bladen County. Any person violating this section shall be guilty of a misdemeanor, and upon conviction shall be fined not more than fifty dollars or imprisoned for thirty days. This section shall apply only to Brown Marsh Township in Bladen County.

P. L. 1915, c. 187.

2032. Bladen: White Lake; hook and line only. It is unlawful to catch, kill or destroy fish in White Lake, in Bladen County, by means of nets, traps, by gigging, by shooting, or by any other means or methods, except by hook and line: Provided, that set hooks, bobs and trolls shall

be construed as being hooks and lines. Any person violating the provisions of this section shall be guilty of a misdemeanor and fined not exceeding fifty dollars or imprisoned not exceeding thirty days.

P. L. 1913, c. 295.

2033. Brunswick: Mullet fishing; purse nets. If any person, firm or corporation shall fish for and catch any mullets with any purse seine or purse net in the waters within the limits of Brunswick County, extending to the extreme limits of the State's jurisdiction in and over said waters—and for the purpose of this section any portion of any water within a distance of three nautical miles from the outer shores of said county shall be deemed the waters of said county—or if the master or any employe on any steamboat engaged in fishing for menhaden or fatbacks shall discharge from said boat fish offal, blood or slime within a distance of one-half mile of any established mullet fishery on the Brunswick County coast between the first of August and the thirty-first of December of each year, he shall be guilty of a misdemeanor and, upon conviction, shall be fined or imprisoned at the discretion of the court. For the purposes of this section an established fishery is declared to be that point on the beach occupied by the surfboat and seine in regular use.

Rev., s. 2481; 1905, c. 748.

2034. Brunswick: Nonresidents must have license. It is unlawful for any nonresident of this State to engage in the business of gathering oysters, clams and terrapins for gain, or for market, within the limits of Brunswick County without first obtaining from the County Commissioners of said county a license to carry on such business, which license may be granted by the County Commissioners of said county upon paying to the treasurer of said county, to be used for county purposes, the sum of fifty dollars for each nonresident engaged in such business, and twenty-five dollars for each nonresident hand employed: Provided, that such license so granted shall be for one year and shall expire on the first day of October of each year. Any person or persons violating the provisions of this section shall be guilty of a misdemeanor.

1907, c. 68.

2035. Carteret: Cedar Island Township; hauling nets with power. It is unlawful for any person or persons, firm or corporation to pull any haul net within the waters of Cedar Island Township, Carteret County, with steam, gasoline, or any other motor power. Any person or persons, firm or corporation violating the provisions of this section shall be guilty of a misdemeanor and be fined or imprisoned, or both, in the discretion of the court.

1915, c. 281.

2036. Carteret: Use of dutch nets. If any person shall use or cause to be used any dutch net, pound net or other stationary trap net or seine of similar description, by whatever name known, in the waters of Carteret County for the purpose of taking fish therefrom, he shall for each day's use thereof forfeit and pay the sum of fifty dollars. The penalties herein created shall be recovered by a warrant before any justice of the peace in the county of Carteret, and shall be applied to the use of the public schools of said county; and such offender, in addition to the penalties contained in this section, shall be guilty of a misdemeanor and fined not less than one hundred dollars nor more than five hundred dollars, or imprisoned in the county jail not less than six months nor more than twelve

months: Provided, this section shall not apply to the ordinary set nets heretofore in use in the waters of said county.

Rev., s. 2435; Code, s. 3420; 1883, c. 199.

2037. Carteret: Size of seine mesh. If any person shall catch mullets in the waters of Carteret County with a seine or net having a mesh of less than one and one-eighth inches, he shall be guilty of a misdemeanor and fined not more than fifty dollars or imprisoned not more than thirty days.

Rev., s. 2434; 1895, c. 25; 1903, c. 508.

2038. Carteret: Length of nets; joining together. It is unlawful for any person, firm, corporation or syndicate to fish any net or seine in the waters of the State of North Carolina within the boundaries of Carteret County more than two hundred and seventy-five yards in length: Provided, this length shall not apply to purse seines used for the purpose of catching menhaden (fatbacks) only. Any person, firm, corporation or syndicate violating this section shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than fifty dollars or be imprisoned not more than thirty days, in the discretion of the court. Each day said nets or seines are fished shall constitute a separate offense under this section.

1911, c. 130, s. 1.

2039. Carteret: Joining nets together. When a condition arises that a crew of fishermen find it advantageous to join two or three nets together for the purpose of temporary fishing, it shall be lawful under this section to do so under the following rules and regulations, namely: Provided, (a) The total length of nets joined together shall not exceed eight hundred and twenty-five yards. (b) That not more than one of the nets, whose length shall not exceed two hundred and seventy-five yards, as provided in the preceding section, shall be owned by any one person, firm, corporation or syndicate thus fishing. (c) That not less than two men shall be permitted to fish with each net thus joined together. (d) That no position or haul shall be held by anchoring boat (except when occupied by men fishing same), buoys, stakes, or any other device. (e) That no seines or nets shall be hauled by capstans. (f) That no nets of smaller mesh than one and three-eighths inches bar or two and six-eighths inches stretched measure shall be joined together for the purpose of fishing under this section. (g) That each net thus joined shall have two staffs. Any person violating any of the provisions of this section shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than two hundred dollars or imprisoned not less than six months.

This section applies only to the waters of the State within the boundaries of Carteret County, and within such waters it does not authorize the fishing of nets joined as specified at any stationary fishery, or where the said waters are of less width than one and one-fourth miles.

1911, c. 130, s. 2.

2040. Carteret: Obstructions to fish prohibited. If any person shall obstruct any navigable water or passageway for fish in Carteret County by placing bushes, posts or any stationary material or fixtures in such a manner as to prevent the free passage of fish, he shall be guilty of a misdemeanor and fined not less than one hundred dollars. Nothing in this section shall be construed to prohibit any person from using a lawful net or seine in any way or manner except as a stop net or seine. This section shall not apply to any net that the fish can pass freely by one end.

Rev., s. 2436; 1903, c. 520.

2041. Carteret: Pound nets in Neuse River. It is lawful to fish pound nets from January first to May fifteenth of each year within the waters of that portion of Carteret County with a line beginning at the northwest point of outward Swan Island, running a due north course; from such line running up the Neuse River to the spar buoy at the entrance of Adams' Creek: Provided, that not more than five nets shall be set in any one stand: Provided further, that not more than one-fourth of the river in width shall be used for the purpose of fishing under this section. Any person, firm, corporation or syndicate fishing with pound nets in the waters of Carteret County at any other time except as prescribed in this section shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than two hundred dollars or imprisoned not less than six months, in the discretion of the court. It is expressly enacted that every day such fishing is done in violation of this section shall constitute a separate offense.

1911, c. 128.

2042. Carteret: Purse nets for mullet prohibited. If any person shall fish for or catch any mullets with any purse seine or purse net in any waters within the limits of Carteret County, extending to the extreme limits of the State's jurisdiction in and over such waters, he shall be guilty of a misdemeanor and be fined not less than five hundred dollars or imprisoned not less than one year. For the purposes of this section the following boundaries are hereby declared to be the boundaries to which the waters of said county extend, to wit: A distance of three nautical miles, measured from the outer beach or shores of Carteret County out and into the waters of the Atlantic Ocean; and any portions of any water within a distance of three miles from said waters of the Atlantic Ocean to any beach or shore of said county shall be deemed the waters of said county for the purposes of this section.

Rev., s. 2437; 1903, c. 583; 1905, cc. 274, 508.

2043. Carteret and Onslow: Purse nets prohibited for food fish. It is unlawful for any person, firm or corporation to catch any food fish in a purse seine or purse net in any waters within the limits of Carteret and Onslow counties extending to the extreme limits of the State's jurisdiction in and over such waters, making the boundaries of said county to which said waters shall extend to be the distance of three nautical miles, measured from the outer beach or shores of Carteret and Onslow counties out into the waters of the Atlantic Ocean. Any waters within a distance of three miles of any beach or shore of said counties shall be deemed the waters of said county for the purposes of this section. It is unlawful for any person, firm or corporation to purchase, buy or trade for, or deal in, or sell any food fish caught as is set forth in this section. Any person, firm or corporation violating any provision of this section shall be deemed guilty of a misdemeanor, and shall be fined not less than three hundred dollars nor more than five hundred dollars, or imprisoned, in the discretion of the court. Any person who shall furnish information upon which any person, firm or corporation shall be convicted of a violation of any of the provisions of this section shall be entitled to one-half of the fine imposed therefor.

1907, c. 857; 1911, cc. 126, 204.

2044. Chatham: Fishways in Haw River. All persons maintaining dams across Haw River in the county of Chatham shall, upon thirty days notice from the Board of Commissioners of said county, establish fishways

in said dams; and if said fishways shall not be made within three months from the service of the notice, said persons so offending shall be guilty of a misdemeanor and fined at the discretion of the court.

Rev., s. 2476; Code, s. 3402; 1881, c. 343, ss. 1, 2.

2045. Clay: Fishing regulated. It is unlawful for any person or persons to fish the waters of Clay County in any other manner than hook and line. Any violator of this section shall be guilty of a misdemeanor and fined not less than twenty-five dollars or imprisoned not less than thirty days.

P. L. 1919, c. 407.

2046. Columbus: Lumber River; fishing regulated. It is unlawful for any person, firm or corporation to fish with seine, traps, gigging, striking or dynamiting, by shooting with gun or rifle in Lumber River or its tributaries in Columbus County: Provided, this section shall not apply to any person fishing on his own lands or those who may have written consent of the owner of the land where fishing. It is unlawful for any person, firm or corporation to fish with gill net in Lumber River or its tributaries in Columbus County, except during the months of October, November, December, January and February. Any person violating this section shall be guilty of a misdemeanor, and upon conviction shall be fined not more than fifty dollars nor less than ten dollars, one-half to go to the informant, or imprisoned not more than thirty days nor less than ten days in jail, with authority to the County Commissioners of Columbus County to hire out such convict.

P. L. 1913, c. 740.

2047. Columbus: Traps and nets in Porter Swamp. It is unlawful for any person or persons to set any fish traps or nets in the waters of Porter Swamp in Columbus County in such manner as to prevent the free passage of fish. Any person violating the provisions of this section shall be guilty of a misdemeanor and shall be fined not less than ten dollars nor more than twenty-five dollars, or imprisoned not less than ten days nor more than thirty days for each offense.

P. L. 1911, c. 748.

2048. Currituck County: Fishing in Atlantic Township. It is unlawful for any person or persons to catch fish with seine or set net, or nets of any kind, in the waters of Atlantic Township between the fifteenth day of April and the twentieth day of October in each year, within the following boundaries in said township: Beginning at a cedar stump standing on the beach north of Caffie's Inlet Life-saving Station and extending a west course five hundred yards from the shore; thence paralleling the shore a southerly course to the Dare County line. It is unlawful to set any pound or dutch nets in the waters of said township. Nothing herein shall prevent the catching or selling of twenty-five pounds of fish on any one day for home consumption; nor prevent the catching of eels, mullets and herrings at any time during each year; nor prohibit fishing at night. Any person violating the provisions of this section or any part thereof shall be guilty of a misdemeanor for each and every offense and, upon conviction, shall be fined not more than fifty dollars nor less than twenty dollars or imprisoned not more than thirty days.

1909, c. 619.

2049. Currituck County: Dutch nets in Currituck Sound. If any firm, company or corporation shall operate or cause to be operated in the waters of Currituck County, or be interested in any manner whatsoever in

more than six pound or dutch nets, or use more than one hundred yards of hedging to a net, or set a stand of such nets exceeding eight hundred yards in length from land to the extreme outward end; or if any person shall set any pound or dutch nets to the east of the center of Currituck Sound, except that part from the west point of Mackey's Island north of the Virginia line; or if any person shall leave any landing or anchorage before sunrise for the purpose of fishing in Currituck Sound or tributaries, or shall continue to fish after dark, he shall be guilty of a misdemeanor and be fined not less than twenty-five nor more than fifty dollars. This section shall not prohibit fishing after dark in that part of said sound west of a line beginning at the north point of Bell's Island, thence north not more than one thousand yards from the mainland to the mouth or entrance of Tull's Creek, nor night fishing between the thirty-first day of March and the twentieth day of October five hundred yards from the shore from Martin's Point to Kitty Hawk Bay.

Rev., s. 2430; 1905, c. 273, ss. 3-7.

2050. Currituck County: Shipping or selling fish. If any person shall catch or capture any fish with nets or other appliances in the waters of Currituck County between the fifteenth day of April and the twentieth day of October of each year, or shall sell or ship out of the county or State any fresh fish between said dates; or if any person shall be found with more than twenty-five pounds of freshwater fish in his possession between the thirty-first day of March and the twentieth day of October of each year, herrings, mullets, shad and eels excepted; or if any person shall in said county catch eels for market between the thirtieth day of April and the twentieth day of September following in each year, he shall be guilty of a misdemeanor and be fined not more than fifty dollars and not less than twenty-five dollars. Any citizen may catch not to exceed twenty-five pounds at any time for home consumption, and sell or give not more than ten pounds to any one person in one day.

Rev., s. 2431; 1905, c. 273, s. 1; 1907, c. 520.

2051. Currituck County: Right of search. If any constable, game warden or justice of the peace of Currituck County shall be informed, or have cause to suspect, that either of the two preceding sections is being violated, he is hereby authorized and empowered to examine the contents of any fishing boat, or packages in transit, and any person or common carrier refusing to exhibit the contents of any fishing boat or package to such officer shall be guilty of a misdemeanor, and shall be fined not less than twenty-five and not more than fifty dollars.

Rev., s. 2432; 1905, c. 273, ss. 2, 7.

2052. Dare: Dutch and pound nets prohibited. It is unlawful for any person, firm or corporation to set any dutch or pound net within the space or area of water bounded and described as follows: Beginning at Hollowell's Wharf, at Nags Head, and running thence a due west course to the channel in Roanoke Sound; thence northwest to the Currituck County line; thence with said Currituck County line to the shore.

Any person violating this section shall be guilty of a misdemeanor and, upon conviction, shall be fined fifty dollars or imprisoned thirty days, in the discretion of the court.

1913, c. 113.

2053. Dare: Fishing in Kitty Hawk Bay regulated. If any person shall take, catch or capture any fish with nets or other appliances in that part of the waters of Kitty Hawk Bay and its tributaries lying in Dare

County, between the thirtieth day of April and the fifteenth day of October of each year, or shall sell or ship out of the county any chub or perch between said dates, he shall be guilty of a misdemeanor and fined not more than fifty dollars or imprisoned not more than thirty days. Nothing in this section shall prevent any citizen from catching fish at any time for home consumption.

Rev., s. 2484; 1905, c. 363.

2054. Greene: Size of mesh; fishing on another's land. It is unlawful for any person or persons to fish with or set any nets with less meshes than one and one-fourth inches square. No person or persons shall fish with nets of any kind on another person's land without first getting permission from the owner of the lands to do so, except in navigable streams, as rivers or large creeks. Any person or persons violating this section shall be guilty of a misdemeanor and, upon conviction thereof, shall pay a fine of not less than five dollars nor more than twenty dollars for each offense. This section shall apply to Greene County only.

P. L. 1915, c. 494.

2055. Hertford and Northampton: Fish in Potecasi Creek protected. It is unlawful for any person to use, set or in any manner to fish with any fish trap, fyke net, seine or drag net in the waters of Potecasi Creek, in Hertford and Northampton counties, from its mouth to the Creeksville Mill, in Northampton County. Any person violating this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than fifty dollars or imprisoned not more than thirty days.

1909, c. 662.

2056. Hyde: Pound and dutch nets prohibited. It is unlawful for any person to set or use any pound or dutch net south of the dividing line between Dare and Hyde counties on the west side of Pamlico Sound along the shores of Hyde County, more than two thousand yards from a line drawn from point to point along said shore. Any person violating this section shall be deemed guilty of a misdemeanor and, upon conviction, shall remove said nets at once: Provided, that any person failing to remove said nets after conviction shall be subject to a fine of not less than ten nor more than fifty dollars.

1915, c. 59.

2057. Hyde: Drag nets prohibited in Rose Bay. It is unlawful for any person to use or take fish from the waters of Rose Bay, or any of its tributaries, in Hyde County, with drag nets or drop nets. Any person violating this section shall be guilty of a misdemeanor and fined not less than twenty-five dollars nor more than fifty dollars.

P. L. Ex. Sess. 1913, c. 264; P. L. 1915, c. 349.

2058. Hyde: Drag nets prohibited in Slade's River and Fortescue Creek. The name of Slade's Creek in Hyde County is hereby changed to Slade's River, and by such name the said watercourse shall in future be designated in all official maps, records, laws and other official documents authorized by the State of North Carolina. Fishing with drag nets is prohibited in said river and tributaries and in the waters of Fortescue's Creek, in said county. Any violation of the provisions of this section relating to the manner of fishing shall be a misdemeanor, and shall be punished by a fine not exceeding fifty dollars or imprisonment not exceeding thirty days, in the discretion of the court.

1909, c. 520.

2059. Hyde: Slade's River; nets in. The mouth of Slade's River, in Hyde County, is hereby fixed and located by running a straight line from Aquillas Point on Pungo River to Sandy Point on said Pungo River. It is unlawful for any person, firm or corporation to set, fish, or use any kind of net except stake gill nets on the east of said line. Any one violating the provisions of this section shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than twenty-five dollars nor more than fifty dollars, or imprisoned not more than thirty days, in the discretion of the court.

1911, c. 59.

2060. New Hanover: Certain handnets allowed. Handnets of not less than one and one-eighth inch bar mesh may be used in New Hanover County, and no order shall be made by the Fisheries Commission derogatory of this section.

1917, c. 290, s. 5.

2061. New Hanover: Nets in Masonboro and Myrtle Grove sounds. If any person shall use any fyke nets or set-down seines, or place any fish trap for the purpose of catching fish in the waters of Masonboro and Myrtle Grove sounds in New Hanover County, he shall be guilty of a misdemeanor and fined not more than fifty dollars or imprisoned not more than twenty days.

Rev., s. 2425; Code, s. 3421; 1883, c. 288, ss. 1, 2.

2062. New Hanover: Seines in Atlantic Ocean. It is unlawful for any person, firm or corporation to fish with seines, purse, pod or pound nets, or with any kind of nets, except cast nets, in the waters of the Atlantic Ocean in New Hanover County within the following limits:

Beginning at a point on the beach on the north side of the mouth of Moore's Inlet and extending southwardly along the strand of the Atlantic Ocean to a point on the north of the mouth of Masonboro Inlet, and extending one mile out from the shore line. The above shall not apply to the use of set nets between the first day of November and the first day of May next following. Any person violating this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars and imprisoned not more than sixty days.

1915, c. 104.

2063. Onslow: Obstructions in Cypress Swamp and Haws Run. It is unlawful for any person, firm or corporation to fell any trees in or in any way obstruct the natural flow of the waters of Cypress Swamp and Haws Run in Onslow County. Any person, firm or corporation violating this section shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than fifty dollars or imprisoned not more than thirty days.

1907, c. 772.

2064. Onslow: Stop nets prohibited. It is unlawful for any person, firm or corporation to set, place, fix, establish or operate any stop net that will prevent or interrupt the passage of any fish in the water of any creek or sound in Onslow County, between New River and the Carteret County line in said county. Any person, firm or corporation violating the provisions of this section shall be guilty of a misdemeanor and, on conviction, shall be fined not more than fifty dollars or imprisoned not more than thirty days.

1915, c. 133.

2065. Onslow: Nets and seines in ocean regulated. It is unlawful for any person, firm or corporation to set any net or seine on the coast of Onslow County for a longer time than one hour at any one time. Any person violating this provision shall, upon conviction, be fined not less than one hundred dollars or imprisoned not less than three months. One-half of said fine shall go to the party or parties reporting such offenses and furnishing sufficient evidence to convict. In the event any offender shall be unable to pay fine, that his boats, nets and other fishing paraphernalia shall be forfeited and sold to the highest bidder for cash at courthouse door after twenty days notice, and proceeds of said sale be applied to cost and fine and any surplus paid to the defendant: Provided, however, this section shall not tend to convict any party who shall catch more fish than can be taken up in one hour.

1915, c. 184.

2066. Onslow: Seines and nets in New River. It is unlawful for any person, firm, corporation or association to catch fish with haul seine, purse net, or drop net in the waters of New River in the main channel between Hatche's Rock and New River Inlet, or within one-half mile of said inlet in the Atlantic Ocean. Any person, firm, corporation or association violating this section shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than two hundred dollars nor more than five hundred dollars, or imprisoned, in the discretion of the court; fifty dollars of said fine to be paid to the person or persons furnishing evidence sufficient to convict.

P. L. 1913, c. 707.

2067. Pamlico County: Use of nets regulated. If any person shall set or fish any dutch or pound nets in the waters of Pamlico County, or shall use any seine or drag net in the waters of said county, including the north side of Neuse River from the mouth of the river to the mouth of Upper Broad Creek, from the first day of May to the first day of January next ensuing, or shall at any time catch fish with a seine or drag net along the shores of said county on any day of the week except Monday, Wednesday and Friday, he shall be guilty of a misdemeanor and be fined not more than fifty dollars or imprisoned not more than thirty days.

Rev., s. 2452; 1885, c. 198; 1889, c. 544; 1893, c. 334.

2068. Pamlico County: Nets in Dawson's Creek. It is unlawful for any person to fish with drag or haul net of any description in the waters of Dawson's Creek, in Pamlico County. Any person violating this section shall be deemed guilty of a misdemeanor and fined or imprisoned, at the discretion of the court.

P. L. 1911, c. 470.

2069. Pamlico County: Drag nets prohibited in certain streams. It is unlawful for any person to haul or use any drag net in the waters of Vandemere Creek and its tributaries, Smith's Creek, Chappel's Creek and its tributaries, Trent Creek and its tributaries, and Bay River and its tributaries, from the mouth of Trent Creek to the head of both its northwest and southwest prongs, for the purpose of catching or taking fish from said waters. Any person violating this section shall be guilty of a misdemeanor and shall be fined not less than five dollars nor more than ten dollars or imprisoned not less than five days nor more than ten days for each and every offense.

1909, c. 692.

2070. Pasquotank County: Pound or fyke nets in Pasquotank River. It is unlawful for any person, firm or corporation to fish in Pasquotank River above Stinking Gut on either side of said river with pound or fyke nets, or any other kind of net with mudge or leads: Provided, this section shall not be construed to prohibit fishing in said territory with gill nets. Any person, firm or corporation violating this section shall be guilty of a misdemeanor and, upon conviction, shall be fined not to exceed fifty dollars or imprisoned not to exceed thirty days, in the discretion of the court.

P. L. 1913, c. 752, s. 6.

2071. Pasquotank County: Nets in Hatley Creek. If any person shall haul or fish with a drag net, or set a pound net in Big Hatley Creek, or Little Hatley Creek, within two hundred yards of the mouth of either of said creeks, he shall be guilty of a misdemeanor and be fined not exceeding fifty dollars or imprisoned not exceeding thirty days.

Rev., s. 2442; 1895, c. 389; 1903, c. 497; 1911, c. 127.

2072. Pasquotank and Perquimans: Gill nets allowed. It is lawful for fishermen fishing in the Albemarle Sound lying opposite to Perquimans and Pasquotank counties, and its tributaries lying and being in said counties, to set gill nets as near as one hundred and fifty yards of any pound or dutch nets fished in said waters: Provided, that any net shall not be set beyond the line now prohibited in said waters.

1911, c. 138.

2073. Robeson: Fishing in Lumber River. It is unlawful for any person to fish with seine, nets, traps, gigging, or by muddying, striking or dynamiting, in Lumber River or the other rivers, creeks, lakes or ponds in Robeson County: Provided, that this does not apply to persons fishing on their own premises. Any person violating this section shall be guilty of a misdemeanor and, on conviction, shall be fined not more than fifty dollars nor less than ten dollars, one-half to go to the informant, or imprisoned not more than thirty days nor less than ten days in jail, with privilege to County Commissioners of Robeson County or adjacent county to hire out.

P. L. 1911, c. 529; P. L. Ex. Sess. 1913, c. 272.

2074. Robeson: Nets and traps; close season; limit catch. It is unlawful for any person to set any trap or net for the purpose of catching fish in Lumber River or any of its tributaries in Robeson County and in Columbus County between the first day of April and the first day of September in any year. It is unlawful at all times for any person to catch or take more than twelve of the fish known as "red breasts" and trout from Lumber River or any of its tributaries in Robeson County and in Columbus County, in any one day, whether said fish be caught with hook and line, net, trap, or in any other manner. Any person violating the provisions of this section shall be guilty of a misdemeanor and, upon conviction, shall be fined or imprisoned in the discretion of the court.

P. L. 1911, c. 703; P. L. L. 1921, c. 503.

2075. Sampson: Fishing regulated. It is unlawful for any person to fish in any of the rivers, creeks or other streams of Sampson County by means of lime, dynamite, pod nets, bag nets, traps, or by any means or contrivance whereby the free passage of fish is obstructed. Any person violating this section shall be guilty of a misdemeanor and, upon conviction, shall be fined not exceeding fifty dollars or imprisoned not exceeding thirty days.

P. L. 1915, c. 464, ss. 2, 3.

2076. Tyrrell: Alligator River and Frying Pan Creek; nets in. If any person shall fish any pound net, gill net, seine or nets of any kind in Alligator River within one mile of the mouth of Frying Pan Creek in Tyrrell County, or shall set any weir or fish net of any kind or any other obstruction that prevents the passage of fish in said creek from its mouth to Jarmin's Point, at the two pines and low cypress, he shall be guilty of a misdemeanor. If any person shall set any pound net or dutch net in Alligator River within one-half mile of the mouth of Frying Pan Creek in Tyrrell County, or in Frying Pan Creek within three miles of where it enters into Alligator River, he shall be guilty of a misdemeanor and shall be fined fifty dollars or imprisoned thirty days, or both, at the discretion of the court.

Rev., ss. 2447, 2449; 1889, c. 105; 1899, c. 465; 1905, c. 282.

As to throwing fish offal in Frying Pan Creek, etc., see this chapter, s. 1969.

2077. Wayne: Nets and traps in Neuse and Little rivers. The citizens of Wayne County are hereby permitted to put in fish traps and gill stick nets in Neuse and Little rivers, within the limits of Wayne County.

P. L. 1911, c. 465.

SUBCHAPTER IV. NONCOMMERCIAL FISHING

ART. 11 GENERAL REGULATIONS

2078. Trout protected; close season. If any person shall catch mountain trout by seining at any time, or shall take them by shooting or otherwise between the fifteenth day of October and the thirtieth day of December, he shall be guilty of a misdemeanor.

Rev., s. 3418; Code, s. 1122; 1869-70, c. 142.

NOTE 1. For local regulations protecting trout, see list following, by counties.

NOTE 2. For general statutes regulating noncommercial as well as commercial fishing, see supra, this chapter, Art. 9.

For fishing without permission on another's land, see Game Laws, s. 2127.

NOTE 3. Local regulations as to fishing in streams enumerated, see supra, this chapter, Art. 10, Part 2, and the following:

Streams on Grandfather Mountain; fishing without consent forbidden. Rev., s. 2842; 1909, c. 84.

Hiwassee River; obstructions in. Rev., s. 2461.

Nantahala River; fishing regulated. Rev., s. 2477.

South Fork River; obstructions in. Rev., s. 2473.

NOTE 4. Local regulations as to counties, see supra, this chapter, Art. 10, Part 3, and the following:

Ashe. Waters stocked by U. S. Government; fishing prohibited. P. L. 1911, c. 195.

Avery. Elk and Toe rivers; close season. P. L. 1915, c. 526.

Avery, Caldwell, and Mitchell. Rainbow trout; fishing regulated. P. L. 1911, c. 675; P. L. 1913, c. 752, s. 2.

Buncombe. Fish protected; close season for and size of trout; game warden's duty. 1909, c. 570.

Burke. Dynamiting fish prohibited. 1909, c. 895.

Permission to fish required; dynamiting and seining prohibited. P. L. 1911, c. 137; P. L. 1913, c. 752, s. 1.

Burke, Caldwell, and McDowell. Fishways in Catawba River; seining and trapping prohibited. P. L. 1911, c. 170.

Cabarrus. Seining in Coddle and Big Cold Water creeks. P. L. 1911, c. 361.

Cherokee. Shooting fish. P. L. 1915, c. 608, ss. 4, 5; P. L. 1917, c. 162.

Seines and traps in Valley, Notla, and Hiwassee rivers. Rev., s. 2458.

Clay. Fishing for California trout regulated. 1909, c. 374.

Dynamiting fish prohibited. P. L. 1913, c. 623, s. 3.

Free passage of fish in Mission dam in Hiwassee River. 1909, c. 112.

Columbus. Fishing regulated. P. L. 1917, cc. 394, 713.

Craven. Fishing from bridges at New Bern. Rev., s. 2456.

Duplin and Pender. Fishing regulated. P. L. 1917, c. 665.

Durham and Orange. Use of seines and nets in Eno River. P. L. 1913, c. 547.

Gates. Fish in Speight's mill-pond protected. 1907, c. 646.

Fishing in Bennett's Creek mill-pond regulated. 1907, c. 734.

Graham. Close season for trout in Yellow Creek. P. L. 1911, c. 127.

Close season for rainbow trout. P. L. 1911, c. 59.

Halifax. Fishing regulated. P. L. 1917, c. 174.

Harnett and Lee. Seines prohibited in Upper Little River. P. L. 1911, c. 379.

Dynamite prohibited in Upper Little River. P. L. 1915, c. 519.

Haywood. Catching trout in Cataloochee Creek. Rev., s. 2480.
Fishing in Cataloochee Township. 1907, c. 704.
Fishing in Cecil Township. 1907, c. 696.
Henderson. Fishing in certain streams prohibited. 1895, c. 345; P. L. 1913, c. 623, s. 2.
Obstructions in streams prohibited. Rev., s. 2479.
Hertford. Fishing in Liverman's mill-pond. P. L. 1915, c. 354.
Johnston. Close season for Hannah's and Stone's creeks. P. L. 1915, c. 645.
Fishing in Black Creek prohibited. 1907, cc. 713, 870; P. L. 1911, c. 493; P. L. 1913, c. 373.
Fishing in Holt's Lake on Black Creek. 1919, c. 40.
Madison. Close season; use of dynamite. P. L. 1911, c. 380.
Martin. Permission required to fish in Cross Roads Township. 1907, c. 338.
McDowell. Fishing regulated. 1891, c. 5; 1907, cc. 544, 886.
Mitchell. Dynamiting fish prohibited. 1909, c. 895.
Mitchell and Yancey. Use of explosives and dynamite prohibited. P. L. 1913, c. 576.
Perquimans. Shooting fish in Goodwin's mill-pond forbidden. 1909, c. 118.
Polk. Seines, nets, and dynamite prohibited; exception. 1909, c. 590; P. L. 1911, c. 549.
Fishing in North Pacolet and Vaughan's creeks regulated. 1907, c. 149.
Rockingham. Dynamiting fish in Haw River forbidden. 1909, c. 311.
Sampson. Fishing in certain streams permitted. 1907, c. 359.
Swain. Close season for trout in Tabor's Mill Creek. P. L. 1911, c. 121.
Close season in Sawmill and Tabor's Mill creeks. P. L. 1915, c. 355.
Fishing on Sunday prohibited. P. L. 1915, c. 573.
Hazel and Forney's creeks; close season; limit. 1909, c. 247.
Hazel Creek. 1905, c. 281; 1907, c. 426.
Rainbow trout in Ocoee Township. P. L. 1911, c. 208.
Transylvania. Seining and trapping prohibited. 1909, c. 128.
Warren. Permission required to fish on another's land. P. L. 1919, c. 169.
Watauga. Trout protected. 1899, c. 285; P. L. 1915, c. 622.
Fishing regulated. 1909, c. 108; P. L. 1911, c. 124; P. L. 1913, c. 762.
Dynamiting fish prohibited. 1909, c. 895.
Yancey. Fishing regulated. P. L. 1911, c. 290; P. L. 1913, c. 752, s. 7; P. L. 1919, c. 412.
Local regulations as to counties since 1919:
Bertie, Gates, Hertford, and Northampton. County game and fish law. P. L. L. 1923, c.
Bladen. Close season in Johnson's Mill Pond and Phillips' Creek. P. L. L. 1923, c.
Burke. Fish Commission created. P. L. L. 1921, c. 321. Sunday fishing prohibited.
P. L. L. 1921, c. 454
Caldwell. Prohibition of fishing except by hook and line in the Yadkin River. P. L. L. 1921, c. 244.
Carteret. Regulating manufacture of fish scrap and oil. P. L. L. 1921, c. 384.
Clay. Act to protect fish. P. L. L. 1921, c. 474.
Cumberland. Unlawful to trap or net fish, or set hooks without permission of landowner,
P. L. L. Ex. Sess. 1921, c. 152.
Haywood. Act to protect fish and game. P. L. L. 1923, c.
Henderson. Act to promote fish industry. P. L. L. 1923, c.
Hyde. Act to protect fish in Pungo River and its tributaries. P. L. L. 1923, c.
Jackson. Act to protect game, fish, and fur-bearing animals. P. L. L. 1923, c. (See
P. L. L. 1921, c. 156, Ex. Sess.)
McDowell. Fishing with seine or net in Catawba River prohibited. P. L. L. 1921, c. 192.
Madison. Act to protect fish. P. L. L. 1923, c.
Montgomery and Stanly. Fishing with baskets and nets prohibited. P. L. L. 1920, c. 127,
Ex. Sess.
Montgomery. Prohibition of all kinds of fishing, except with hook and line. P. L. L. 1921,
c. 274.
Pender. Close season for fishing with nets or seines. P. L. L. 1923, c.
Richmond. Unlawful to fish in any way except with hook and line, except in Pee Dee
River. P. L. L. 1921, c. 145, Ex. Sess.
Sampson. Fishing regulated in Sampson, Cumberland, and Harnett counties. P. L. L.
1923, c.
Surry. Prohibit throwing of sawdust in streams and the killing of fish by explosives.
P. L. L. 1923, c.
Swain. Act to protect fish establishes a close season. P. L. L. 1923, c.
Watauga. Fishing in Boone Fork Creek regulated. P. L. L. 1923, c. "Act for the pro-
tection of fish. P. L. L. 1923, c.
Yancey. An act for the protection and propagation of game and fish. P. L. L. 1923, c.

POWER OF FISHERIES COMMISSION BOARD TO REGULATE THE FISHING INDUSTRY OF NORTH CAROLINA

The decision of the Supreme Court in *State v. Dudley*. 182 N. C., 822, is as follows:

Criminal action tried before his Honor, J. Loyd Horton, judge, and a jury, at March Term, 1921, of the Superior Court of Carteret County. Defendant was convicted under the following bill of indictment:

"The jurors for the State upon their oath present: That Henry Dudley, late of the county of Carteret, on the 28th day of December, 1920, did willfully, unlawfully and feloniously take scallops with drags or scrapes in that territory in Bogue Sound lying between Spooners Point and Brant Island, the same being that territory designated as unlawful or forbidden grounds, in violation of orders, rules, regulations, etc., of the Fisheries Commission Board at meeting held October 7, 1919, and known as Regulation No. 13, contrary to the form of regulations of said Commission Board and against the peace and dignity of the State. And the jurors for the State upon their oaths aforesaid do further present: did willfully, unlawfully and feloniously violate Regulation 5 of the Orders, Rules and Regulations of the Fisheries Commission Board, passed various meetings held from April 29, 1915, to July 5, 1920, contrary to the form of the regulations of said Fisheries Commission Board."

From judgment on the verdict the defendant appealed, assigning for errors chiefly: The refusal to quash the bill for that same did not state a criminal offense; refusal to instruct the jury that on the entire evidence, if accepted by the jury, no criminal offense has been established.

Thomas W. Bickett, James S. Manning, Attorney-General; Frank Nash, Assistant Attorney-General, for the State.

E. H. Gorham, C. R. Wheatley, O. H. Guion, Charles L. Abernethy, for the defendant.

HOKER, Judge. In recognition of the great importance of fish and fishing industries connected therewith in the public waters of the State as a source of food supply to the people and of the impelling necessity for authoritative and intelligent regulation concerning them, the General Assembly has made elaborate statutory provisions on these subjects, the same, general and special, appearing principally in Consolidated Statutes, chapter 37, sections 1965 to 2078, inclusive. And recognizing further that it is impossible in a fixed and formal statute to foresee and provide for all the administrative details sure to be required under such extended and ever-varying conditions, the legislation referred to creates a commission to be termed the "Fisheries Commission Board," giving it the general control of the subject, and in addition to other special provisions conferring general powers in terms as follows:

"The Fisheries Commission Board is hereby authorized to regulate, prohibit or restrict in time, place, character, or dimensions, the use of nets, appliances, apparatus, or means employed in taking or killing fish; to regulate the seasons at which the various species of fish may be taken in the several waters of the State, and to prescribe the minimum sizes of fish which may be taken in the said several waters of the State, or which may be bought, sold, or held in possession by any person, firm or corporation in the State; and such regulations, prohibitions, restrictions and prescriptions, after due publication, which shall be construed to be once a week for four

consecutive weeks in some newspaper in North Carolina, shall be of equal force and effect with the provisions of this act; and any person violating the provisions of this section shall be guilty of a misdemeanor, and, upon conviction, shall be fined or imprisoned, at the discretion of the court."

And in further enforcement of the law, section 1901 makes provision as follows:

"Upon failure of any person, firm, or corporation to comply with any of the provisions of this article, or any of the fisheries laws, any license issued to any such person, firm, or corporation may be revoked by the Fisheries Commission, and upon satisfactory settlement may be reinstated, with the consent of the Board. All such persons violating the provisions of this article or of the fisheries law shall be guilty of a misdemeanor."

Under the powers so conferred and in promotion of the general purposes of the statute, the Fisheries Commission Board made and established a formal rule or regulation, which prohibited the taking of scallops with drags, or scrapes in a certain portion of Bogue Sound, between Spooners Point and Brant Island, and designating such locality as unlawful and forbidden territory. And on the trial there was evidence of the State tending to show that at the time specified, the ground having been properly staked off as forbidden ground, defendant was employed in taking scallops in the manner prohibited, and on this evidence, accepted by the jury, defendant was duly convicted of the offense charged in the bill, and from judgment on the verdict has appealed.

It was chiefly and very earnestly contended before us that this conviction cannot be sustained because it presents an unwarranted attempt to delegate legislative power. It is well recognized that except in the case of municipal corporations when in the exercise of governmental functions on local matters, legislative power may not be delegated. But if it be conceded that the Board in question here, the Fisheries Commission Board, as a mere administrative board does not come within the exception stated, it is firmly established in this jurisdiction and fully recognized in authoritative cases elsewhere that, though legislative powers may not be in strictness delegated to a board of that character, it is fully competent for the Legislature to delegate to such Board the power to "establish the pertinent facts or conditions upon which a statute makes its own action depend." This statement of the principle taken from 8th Cyc., p. 830, was directly approved and applied in *State v. R. R.*, 141 N. C., pp. 846-851, a decision upholding the conviction of defendant for violation of the administrative regulations of our Department of Agriculture. And a forcible and striking illustration in approval of the same position is presented in a recent case of *State v. Hodges*, sustaining regulations of the same department in reference to eradication of cattle ticks.

It has been applied also in reference to regulations of the Health Department as in the case of compulsory vaccination. *Morgan v. Stewart*, 144 N. C., p. 424, citing *State v. Hay*, 126 N. C., p. 999; *Hutchins v. Durham*, 137 N. C., p. 68; *Morris v. Columbus*, 102 Ga., p. 792.

And in *Express Co. v. R. R.*, 111 N. C., p. 463, it was fully recognized as justifying the Legislature in delegating to the Corporation Commission the power of establishing transportation rates, etc. Similar decisions resting upon the same principle appear in *U. S. v. Grimand*, 220 U. S., p. 506; *Isenhour v. State*, 157 Ind., p. 517, and in many other authoritative cases, and may be considered as the generally accepted rule on the subject.

In the *Grimand* case, *supra*, it was held among other things "That Congress cannot delegate legislative power (citing *Field v. Clark*, 143 U. S., p. 692), but the authority to make administrative rules is not a delegation of legislative power, and such rules do not become legislation, because violation

thereof are punished as public offenses." And so it is here. The Commission, as stated, under authority conferred, have established the regulation that these scallops shall not be taken in drags in certain designated localities. And the statutes referred to enact that to take these fish or mollusks, contrary to this administrative rule shall constitute a misdemeanor, and it is on this that the conviction is lawfully made to rest.

It is argued in support of the defendant's position that the indictment is for violating the rule, and not otherwise, but the suggestion is without merit. It may have been the better form to have added to the bill that the alleged default was also "contrary to the statute in such case made and provided," but this, if it be a defect, is one cured in express terms by our Statute of Jeofails, Consolidated Statutes, section 4625.

It is further insisted for defendant that the locality to which this regulation applies is nowhere mentioned or designated in the law and the same is not therefore included in the powers conferred upon the Board. But a perusal of the statute, and more particularly section 1678, which appertains more directly to the question, will disclose that the jurisdiction of the Board extends to all the public waters of the State or over which it has control. "The several waters of the State" is the precise language of the section referred to and the numerous portions of the law in which places are expressly mentioned are not in restriction of the general words of the principal section, but these places are only mentioned because special provision is made as being desirable or necessary for these places, and this objection also must be overruled.

It cannot for a moment be maintained that scallops, the subject-matter of the inquiry, are not within the powers conferred. In the portion of the statute defining the terms and subjects of the chapter in question, the word "fish" is made to include "porpoises, and other marine mammals, fishes, mollusca, and crustaceans." Not only do scallops come within this comprehensive definition, being a "mollusk of the species pectinidae," but in a later part of the chapter they are expressly mentioned as being within its provisions. This objection, therefore, is overruled.

We have given the case most careful consideration, and owing to the very great importance of this industry to the State and its people, it is gratifying that a conviction can be upheld in accord with accepted principles of constitutional and statutory construction. It is a subject that has deservedly received the fullest consideration of our legislatures, and under the capable, courageous, and impartial enforcement of the law that has prevailed for the past several years, there is reason to believe that substantial and ever-increasing benefits may be expected.

There is no error, and the judgment below is affirmed.

No error.

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